IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. GREGORY SWECKER aka GREGORY R. SWECKER aka GREG SWECKER; BEVERLY SWECKER aka BEVERLY F. SWECKER; SWECKS, INC.; PALISADES COLLECTION, LLC; STATE OF IOWA; GRAND JUNCTION MUNICIPAL; UNIFUND CCR PARTNERS; and MIDLAND POWER COOPERATIVE, Defendants.	*	4:09-cv-00013 ORDER ON MOTION TO DISMISS

Before the Court is Defendants' Motion to Dismiss for Failure to State a Claim on which Relief Might be Granted, filed February 5, 2009. Clerk's No. 9. The United States filed a response on March 9, 2009. Clerk's No. 15. Gregory R. Swecker and Beverly F. Swecker filed a reply on March 19, 2009. Clerk's No. 16. The matter is fully submitted.

I. BACKGROUND

On May 31, 1983, Gregory R. Swecker ("Mr. Swecker") and Beverly F. Swecker ("Mrs. Swecker") (collectively "the Sweckers") executed and delivered to the United States, acting through the Farmers Home Administration ("FmHA"), now the Farm Service Agency ("FSA"), United States Department of Agriculture ("USDA"), two promissory notes whereby they promised to pay the United States (1) the sum of $82,000.00 with interest at 10.25 percent per annum and (2) the sum of $160,000.00 with interest at 10.75 percent per annum. Compl. at ¶¶ 3,

4. As consideration for the note, the United States made two FmHA loans (Loans #44-01 and #44-02, respectively) to the Sweckers pursuant to the Consolidated Farm and Rural Development Act, 7 U.S.C. § 1921, et seq. *Id.* As security on the payment of these two notes, the Sweckers executed and delivered to the United States a real estate mortgage upon the following real estate in Greene County, Iowa: Lots One (1) and Two (2) in the Northeast Quarter (NE ¼) of Section Twelve (12), Township Eight-four (84) North, Range Thirty (30), West of the 5th P.M., Greene County, Iowa. *Id.* at ¶ 5. These two loans were rescheduled by agreement between the parties, effective as of February 1, 1985, for the principal debts of (1) $80,783.01, with interest at 7.25 percent per annum (Loan #44-05), and (2) $176,666.89, with interest at 5.25 percent per annum (Loan #41-06), respectively. *Id.* at 7, 8. These debts were again rescheduled, effective July 12, 1991, for the principal debts of (1) $65,715.77 with interest at 5.00 percent per annum (Loan #44-11), and (2) $175.901.25 with interest at 5.00 percent per annum (Loan #41-12), respectively. *Id.* at ¶ 11.

On or about March 19, 1984, the Sweckers executed and delivered to the United States, again acting through the FmHA, another promissory note whereby they promised to pay the United States the sum of $28,000.00 with interest at 10.25 percent per annum. *Id.* at ¶ 6. As consideration for the note, the plaintiff made another FmHA loan to the Sweckers (Loan #44-03). *Id.* This loan was rescheduled by agreement between the parties, effective June 3, 1986, and became the principal debt of $23,377.00 with interest at 5.00 percent per annum (Loan #44-08). *Id.* at ¶ 9. On January 2, 1991, the FmHA made a protective advance of $5.00 for a filing fee, which was designated as Loan #44-99. *Id.* at ¶ 10. Loans # 44-08 and 44-99 were consolidated and rescheduled, effective July 12, 1991, by agreement between the parties in the

principal amount of $19,040.06 with interest at 5.00 percent per annum (Loan #44-13). *Id.* at ¶ 13.

On December 30, 1996, the parties entered into a Shared Appreciation Agreement ("SAA"). *Id.* at ¶ 14. In doing so, the Sweckers signed a promissory note wherein the notes for Loan numbers 44-11, 41-12, and 44-13[1] were rescheduled in the principal amount of $152,997.19 with interest at 5.00 percent per annum (Loan #41-14). *Id.* at ¶¶ 14, 15; Ex. K. In the SAA, the Sweckers agreed to pay a "write-down" that required, in relevant part, that fifty percent of any positive appreciation in the market value of the property securing the loan be paided to the FSA upon expiration of the agreement on December 30, 2006. Compl. at ¶¶ 16-18; Ex. K. As security on the payment of the note and the write-down, the Sweckers executed and delivered to the United States a real estate mortgage upon the same real estate in Greene County, Iowa that had secured their earlier notes. Compl. at ¶ 19; *see also* Exs. K, M, N. The SAA stated the appraised value of the property at the time of signing was $153,000. Compl. ¶ at 17. The FSA subsequently determined that the appraised value of the property was $386,000.00 in March 2007. *Id.* at ¶ 18. Accordingly, the United States determined that the Sweckers owed the FSA $116,500.00 under the write-down provision. *Id.*

On November 14, 2006, the FSA sent notice that the SAA would mature on December 30, 2006 and requested identification of capital improvements. *Id.* at ¶ 20. On March 13, 2007, the FSA sent notice that the SAA was due and owing. *Id.* at ¶ 21. The FSA obtained a

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[1] The United States' Complaint lists the loans as Numbers 41-11, 41-12, and 41-13 in the text of paragraph 15 and as Numbers 44-11, 44-12, and 44-13 in footnote 1. Compl. at 15. However, the SSA agreement lists the loans as Numbers 44-11, 41-12, and 44-13, which also corresponds with the loan numbers set forth in the other paragraphs of the Complaint and the attached exhibits. *See generally* Compl., Exs. A-K.

mediation release from the Iowa Mediation Service on July 16, 2007. *Id.* at ¶ 22.

Asserting that the Sweckers have failed to make required payments to the United States in violation of the provisions of the mortgages and that the indebtedness has been accelerated and demand for payment in full has been made, the United States brings the present action. The Complaint lists the following defendants as having possible interests, though junior and inferior to the interests of the United States, in the property: Swecks, Inc.; Palisades Collection LLC; State of Iowa; Grand Junction Municipal Utilities; Unifund CCR Partners; and Midland Power Cooperative. *Id.* at ¶¶ 26, 27.

The United States seeks judgment in rem against the mortgaged real estate and in personam against the Sweckers in the amount of $254,163.29 principal, $77,552.59 interest, plus interest accruing after November 13, 2007 at a rate of $24.5146 per day to the date of judgment, together with interest at a legal rate thereafter, plus the costs of this action. The United States also seeks to have: (1) its mortgages be declared valid prior liens on the property described; (2) all legal right, title and interest which the Sweckers have in the mortgaged property be foreclosed, sold at public sale in accordance with 28 U.S.C. §§ 2001-2003, and the proceeds from the sale used to satisfy filing fees, costs of the sale and court action, the judgment against the mortgaged property and the Sweckers, and the interest accruing on the judgment; and (3) all right, title, and interest in and to the described real estate of all persons claiming an interest by, through, or under the Sweckers be decreed to be junior and inferior to the United States' mortgages and be absolutely barred and foreclosed.

The Sweckers filed a Motion to Dismiss for Failure to State a Claim on which Relief Might be Granted (hereinafter "Motion to Dismiss") on February 5, 2009. In the Motion to

Dimiss, the Sweckers question the Court's subject matter jurisdiction over this matter and request "a show of cause" for the naming of Swecks, Inc., Palisades Collection LLC, State of Iowa, Grand Junction Municipal Utilities, Unifund CCR Partners, and Midland Power Cooperative as defendants. Next, the Sweckers assert that the litigation is barred by "the doctrine of retaliation," making reference to past litigation between the Sweckers and the Federal Energy Regulatory Commission. Additionally, they describe the Complaint as a request by the United States that the Court validate the loan documentation attached to the Complaint. They contend that the United States, by requesting this authentication, is requesting the Court to rewrite FSA rules and provisions, which they assert is an impermissible legislative function. The Sweckers imply that the documents attached to the Complaint are not valid and request that the Court impose sanctions on the United States, pursuant to Federal Rule of Civil Procedure 11, for involving the Court in a fraudulent act. In addition, the Sweckers seek to have this case dismissed for failure to state a claim under Iowa Code §§ 614.4, 614.17A, and 615.3.

The United States' response asserts that its Complaint sets forth a claim that satisfies the requirements of Federal Rule of Civil Procedure 8(a), that the Court has jurisdiction over the parties, all of whom are properly named, that the Court has jurisdiction over the foreclosure action, that the United States has legal standing, that the issues in the Complaint are not barred by a "doctrine of retaliation," and that its evidence is valid.

II. LAW AND ANALYSIS

The Swecker's Motion to Dismiss and Reply brief contain a variety of arguments which are best characterized as assertions that: (1) the United States lacks standing to bring this action; (2) this Court lacks subject matter jurisdiction over the action; (3) the United States has failed to

state a claim in its Complaint; (4) the United States has engaged in a fraud by presenting false documents as attachments to its Complaint; and (5) the United States is barred under a "doctrine of retaliation" from pursuing a foreclosure proceeding against the Sweckers. The Court addresses each of these matters in turn.

A. *Article III- Case and Controversy*

As an initial matter, the Court must address the Sweckers' argument that the United States lacks standing to bring an action in this Court for the relief requested. Article III, section 2 of the United States Constitution provides: "The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, . . . [and] to controversies to which the United States shall be a party. . . ." The "case or controversy" requirement sets forth fundamental limits on the role of the federal courts. *Allen v. Wright*, 468 U.S. 737, 752 (1984). A plaintiff will have "standing" to invoke the power of the federal courts if that plaintiff has suffered an injury in fact, there is a causal connection between the injury and the conduct complained of, and it is likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-561 (1992). The plaintiff must assert her own grievances, rather than those of a third party or "generalized grievances." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). If the plaintiff lacks standing in a controversy, a court has no authority to review or decide the matter. *Summers v. Earth Island Inst.*, __ U.S. __, 129 S. Ct. 1142, 1148 (2009). The party invoking federal jurisdiction bears the burden of establishing its standing. *Lujan*, 504 U.S. at 561. "For purposes of ruling on a motion to dismiss for want of standing, . . . courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 422 U.S. 490, 501

(1975).

It is abundantly clear that the United States has standing to bring this foreclosure action against the mortgaged land and the Sweckers. The United States has alleged that the Sweckers entered into various loan agreements with the United States, pursuant to 7 U.S.C. § 1921, which were secured by a security interest in the mortgaged real estate, and that the Sweckers have defaulted on those loan agreements. This is precisely the sort of concrete and personal injury that the courts have traditionally adjudicated. *See*, *e.g.*, *Conley v. Barton*, 260 U.S. 677, 678 (1923) (affirming the Maine Supreme Court's ruling in a suit to redeem a mortgage); *McDonald v. Smalley*, 26 U.S. 620, 625 (1828) (holding that an action to foreclose a mortgage between citizens of different states may be brought in federal court under diversity jurisdiction); *see also* William Houston Brown, 1 *The Law of Debtors and Creditors* § 8:16 (2008) (noting that foreclosure by judicial sale in one of the most common means to enforce a mortgage).

The Sweckers assert that the United States has no standing to pursue the the issues set forth in the Complaint, arguing this action calls on the Court to perform a legislative function rather than a judicial function. The Sweckers misconstrue the United States' Complaint. In the Complaint, the United States does not ask the Court to re-write FSA rules and provisions as the Sweckers contend. The Complaint clearly requests that a judgment be entered against the mortgaged real estate and the Sweckers in the amount owed under the loan agreements. The United States has standing to bring suit against the Sweckers to recover money it claims is owed it pursuant to the contracts between the parties.

B. *Jurisdiction*

The Sweckers make a conclusory assertion, under the subheading "Jurisdictional

Provisions," that "[t]his matter fails to reach the requirements set forth in 28 U.S.C. § 1345 and 7 U.S.C. § 1921 . . . [and] ask that this matter be dismissed, with prejudice, in its entirety." Mot. to Dismiss at 2. This argument is without merit. Title 28 of United States Code § 1345 provides: "Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress." This is a civil action commenced by the United States to collect on loans made by the United States, acting through the FSA, under 7 U.S.C. § 1921. Accordingly, the Court has original jurisdiction over the case. *See United States v. Mosbrucker*, 340 F.3d 664, 666 (8th Cir. 2003) (concluding the district court had jurisdiction in a foreclosure action under 28 U.S.C. § 1345); *see also United States v. Fink*, 393 F. Supp. 2d 935, 939-940 (D.S.D. 2005) (same).[2]

The Sweckers also challenge the naming of Swecks, Inc., Palisades Collection LLC, State of Iowa, Grand Junction Municipal Utilities, Unifund CCR Partners, and Midland Power Cooperative as defendants in this matter. As the United States clearly states in its Complaint, it has identified possible interests each of the Defendants might have in the mortgaged property, and it seeks to have its own interests in the mortgaged property declared senior to the interests of each of the Defendants. To cut off the interests of junior lienholders, the junior lienholders must be named as defendants in the foreclosure action. *See Kuehl v. Eckhart*, 608 N.W.2d 475 (Iowa

[2] In addition, the Supreme Court has held that federal law governs questions involving the rights of the United States arising under nationwide federal programs disbursing federal funds, such as the FSA. *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979). Even absent the explicit jurisdictional authority set forth in 28 U.S.C. § 1345, the federal courts would have federal question jurisdiction pursuant to 28 U.S.C. § 1331 over judicial proceedings to collect on loans made under federal law.

2000) (allowing junior lienholder omitted from a foreclosure action to quash an execution sale); *see also Shaffer v. Miller*, 192 N.W. 868, 870 (Iowa 1923) ("It is the right of the mortgagee to bring in and make defendants all persons having or asserting any junior claims upon the property, whether they be subsequent purchasers, junior mortgagees, or tenants.").[3] The United States has properly named the potential junior lienholders as defendants.

C. *Failure to State a Claim*

The Sweckers seek dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. Federal Rule of Civil Procedure 8(a) requires only that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief . . . ." In *Bell Atlantic Corp. v. Twombly*, the United States Supreme Court re-visited the question of what a plaintiff must plead in order to state a claim sufficient to survive a motion to dismiss under Rule 12(b)(6). 550 U.S. 544, 554-564 (2007). The Supreme Court held that a viable complaint must include "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. That is, "[f]actual allegations must be enough to raise a right to relief above the speculative level . . . ." *Id.* at 555. This standard is not a "heightened fact pleading" requirement, but "simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of [the claim]." *Id.* at 555, 570.

The complaint must be liberally construed in the light most favorable to the plaintiff and should not be dismissed simply because a court is doubtful that the plaintiff will be able to prove

[3] Though federal law governs foreclosures involving federal programs, neither federal statute nor regulation have established a uniform set of procedures for federal foreclosures by the FSA. *See Kimbell Foods*, 440 U.S. at 727; *see generally* 7 U.S.C. §§ 1921 et seq. Where no federal law governs, a non-conflicting "state law may be incorporated as the federal rule of decision." *Kimbell Foods*, 440 U.S. at 727-28.

all of the necessary factual allegations. *See id.* at 555; *Parnes v. Gateway 2000, Inc.*, 122 F.3d 539, 546 (8th Cir. 1997). Moreover, when considering a motion to dismiss for failure to state a claim, a court must accept the facts alleged in the complaint as true, even if doubtful. *See Twombly*, 550 U.S. at 555; *see also Cruz v. Beto*, 405 U.S. 319, 322 (1972). Thus, a well-pleaded complaint may proceed even if it appears "that recovery is very remote and unlikely." *Twombly*, 550 U.S. at 555-56 (quoting *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds by Davis v. Scherer*, 468 U.S. 183, 191 (1984)).

The Sweckers claim that this case should be dismissed for failure to state a claim on which relief might be granted pursuant to Iowa Code Chapter 614.4 ("Fraud–mistake–trespass"), 614.17A ("Claims to real estate after 1992"), and 615.3 ("Future judgments without foreclosure"). First, none of the Iowa provisions cited by the Sweckers govern foreclosures. Instead, foreclosures of real estate mortgages are governed by the provisions set forth in Iowa Code Chapter 654. More importantly, federal law governs the United States' rights to collect on loans made by federal agencies, including the USDA. *See* 7 U.S.C. §§ 1981a, 1981d, 2001(g) (setting forth conditions and prerequisites for foreclosure actions in conjunction with USDA loans); *see also Fink*, 393 F. Supp. 2d at 939-40 ("The United States and its agencies acting on its behalf can rely on federal law (statutes, regulation, and common law) to enforce the Government's rights against private citizens with whom it has contracted in loan transactions." (citing *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 726 (1979)). The United States is not required to set forth a claim under Iowa law to bring a foreclose action against the Sweckers and the mortgaged real estate.

In its Complaint, the United States details the promissory notes, mortgages and SAA

executed by the Sweckers and attaches copies of each of the notes and mortgages, which it asserts to be true and correct. The United States has alleged sufficient facts in its Complaint to raise a reasonable expectation that discovery will reveal evidence in support of the United States' claim that the Sweckers are in violation of the loan agreements secured by the mortgaged real estate. The Complaint, therefore, survives the Sweckers' motion to dismiss under Rule 12(b)(6).

D. *Other Assertions*

1. *Fraudulent evidence.*

The Sweckers also assert that the United States has brought this action in an "attempt to have obviously manufactured documents activated as authentic without a chain of custody, or any other form of authenticity as to where the [United States'] attachments were derived as compared to Defendant Sweckers[']s original copies provided to them at the time of the signing." Mot. to Dismiss at 4. The Sweckers suggest that the United States is perpetrating a fraud on the Court by introducing false documents, presumably in reference to the copies of the promissory notes, mortgages, and the SAA attached to the Complaint. They argue that the matter should be dismissed under Federal Rule of Civil Procedure 60.

As referenced above, at this early stage of litigation, the Court must construe the Complaint liberally in the light most favorable to the plaintiff and accept the facts alleged in the complaint as true. *See Twombly*, 550 U.S. at 555. Thus, the Court cannot engage in an assessment of the authenticity of filed documents or factual allegations,[4] and such contentions

[4] If the Court were to assess the authenticity of the documents, the Court notes that the Sweckers' allegations that the United States committed fraud by manufacturing false documents would likely be seriously undermined by the fact that the Sweckers attached copies of two real

cannot be the basis on which a court would order the dismissal of properly filed case. Federal Rule of Civil Procedure 60 is applicable only after a judgment, order, or proceeding has occurred and, here, there has been no judgment, order, or proceeding in this foreclosure action. This argument is, thus, without merit.

2. *"Doctrine of retaliation."*

The Sweckers also suggest that the United States is collaborating with other named Defendants and that the foreclosure action is an improper proceeding designed to punish the Sweckers for past litigation between the Sweckers and the Midland Power Cooperative before the Federal Energy Regulatory Commission. As such, they assert that this action is barred by "the doctrine of retaliation." This argument is unpersuasive. The Sweckers have failed to present any authority which applies a "doctrine of retaliation" to bar a foreclosure action, nor any facts in support of their accusations of complicity between the United States and other named Defendants. While several federal civil rights laws prohibit "retaliation," these laws apply only where a person has taken action to secure rights protected by the civil rights laws and where it can be shown that the alleged retaliatory acts are a deliberate response to the actions taken to secure protected rights. *See, e.g.*, *Heymann v. Tetra Plastics Corp.*, 640 F.2d 115, 124 (8th Cir. 1981); 15 U.S.C. § 1691; 42 U.S.C. §§ 2000d, 3605. These laws do not present, as the Sweckers seem to assert, a per se bar against the initiation of a court proceeding to collect debts

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estate mortgages executed by themselves on December 30, 2006. Defs.' Attachs. 1 and 2. These are the same mortgages which the United States alleges were executed to secure payment for Loan Number 41-14 and the SAA and which the United States seeks to foreclose in the present action. *Compare* Pl.'s Exs. M and N *with* Defs.' Attachs. 1 and 2.

from persons in default on a loan agreement.[5] Given the complete lack of legal and factual support for the Sweckers' allegations, the foreclosure action will not be dismissed on these grounds.

As a final note, the Rule 11 sanctions requested by the Sweckers several times throughout their filings are unwarranted. The United States' Complaint satisfies the pleading requirements of Rule 8(a). The Sweckers have presented no plausible arguments that this foreclosure action is presented for an improper purpose, that the United States' legal contentions are questionable, or that the factual contentions lack evidentiary support.

IV. CONCLUSION

For the reasons stated above, the Sweckers' Motion to Dismiss (Clerk's No. 9) is DENIED.

IT IS SO ORDERED.

Dated this ___2nd___ day of April, 2009.

ROBERT W. PRATT, Chief Judge
U.S. DISTRICT COURT

[5] The Sweckers make reference to a civil rights complaint filed by Mrs. Swecker with the USDA Office of Civil Rights for the first time in their Reply brief. There, they assert that the filing of a civil rights complaint places a moratorium on all foreclosure actions. Local Rule 7.1(g) allows for the filing of a reply brief for the limited purposes of asserting newly-decided authority or responding to new and unanticipated arguments made in the resistance. The Court need not entertain a claim which is first raised in a reply brief. *See McGhee v. Pottawattamie County, Iowa*, 547 F.3d 922, 929 (8th Cir. 2008) (finding no abuse of discretion where the district court followed the court's local rule prohibiting new arguments submitted in a reply brief). If the Sweckers wish to raise this issue, they may file an appropriate motion to stay this foreclosure proceeding, accompanied by any pertinent documentary evidence, pending resolution of any on-going administrative proceedings at the USDA.