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By order of the Court, Associate Judge Wesley M. Bogdan

FOR PUBLICATION

**IN THE SUPERIOR COURT
 FOR THE
 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

NORTHERN MARIANA HOUSING CORPORATION,)	CIVIL ACTION NO. 06-0505
)	
Plaintiff,)	
)	ORDER DENYING PLAINTIFF'S <u>EX</u>
v.)	<u>PARTE</u> MOTION FOR APPOINTMENT
)	OF PERSON TO SELL MORTGAGED
LUCIA TECHUR and JOHN WAYNE TECHUR,)	PROPERTY PENDING PRESENTMENT
)	OF AN ACCOUNTING OF THE DEBT
Defendants.)	AND SETTING STATUS CONFERENCE
)	

I. INTRODUCTION

THIS CIVIL ACTION was last before the Court over thirteen years ago on April 25, 2007, when Plaintiff Northern Marianas Housing Corporation (“Plaintiff”) was granted a \$90,675.82 default judgment against Defendants Lucia Techur and John Wayne Techur (“Defendants”). The default judgment was for an unpaid Note that was secured by a mortgage and consisted of: \$70,000.00 in principal; \$16,360.82 in interest (starting from October 26, 2004 at the rate of 9.5%); \$4,250.00 in attorney fees; and \$65.00 in costs. The 2007 default judgment ordered Defendants to pay \$90,675.82 to either the Court or Plaintiff’s attorney within three months and further provided that, if said payment was not made within that period of time, the mortgaged real property may be sold.

II. EX PARTE MOTION

On January 29, 2020, Plaintiff filed an ex parte motion and proposed order (for this Court’s signature) to appoint its legal counsel to proceed with the sale of the mortgaged property. In its *ex*

1 *parte* motion, Plaintiff argues that “there now remains due and owing on the judgment the principle
2 sum of \$88,398.90 together with unrecovered interest in the amount of \$8,318.00” and seeks interest
3 on the principal sum thereof at the rate of 9% per annum starting from January 24, 2020. In support
4 of filing its motion *ex parte*, Plaintiff asserts only that “it is a motion for a procedural order, to which
5 Plaintiff is entitled under statute.”

6 III. DISCUSSION

7 In sum, Plaintiff fails to provide this Court with necessary information to properly consider
8 its motion relating to a default judgment that has apparently sat inactive (and now totally unexplained)
9 for a very long period of time. Plaintiff’s *ex parte* motion does not cite to any statute or rule or clarify
10 the legal basis of the referenced “procedure” that would entitle Plaintiff to secure an *ex parte* order
11 to proceed with the appointment of a person to sell mortgaged property of the *pro se* Defendants who
12 are in default (and have never appeared in Court). Likewise, Plaintiff’s *ex parte* motion does not
13 include the legal description of the mortgaged property to be sold and only references it in the
14 proposed order as the “property identified in the Judgment in this matter.”

15 Plaintiff also fails however to identify exactly which Judgment is being referenced and
16 provides no explanation or definition as to why the *principal* sum it claims is now due in the amount
17 of \$88,398.90 is greater than the sum of the *principal* amount granted in the default judgment, or, the
18 reason that the January 24, 2020 date was selected as the starting date from which 9.5% per annum
19 interest accrues (which also differs from the 9% statutory interest rate granted in the default
20 judgment). Additionally, Plaintiff’s proposed order mistakenly cites to 2 CMC § 4537(d) as the
21 statutory authority to sell the mortgaged property which is actually set out in a separate subsection.
22 *Compare* 2 CMC § 4537(d) (entitled “Trial and Judgment”), *with* 2 CMC §4537(e) (entitled “Sale of
23 the Mortgaged Property”).

1 Plaintiff's failure in its moving papers to provide detailed, accurate and relevant
2 information—and the inactive nature and age of the default judgment—leave wholly unanswered
3 significant questions related to the proposed order to appoint someone to sell mortgaged property at
4 this point in time. As such, the Court cannot simply ignore these issues and thoughtlessly approve
5 Plaintiff's proposed order. In order to properly assess the status of the case and to confirm the
6 existence of a sufficient factual basis to grant or deny the proposed *ex parte* motion, this Court should
7 clearly be provided updated information on the debt—and the real parties in interest after such a long
8 period of time.

9 Therefore, after thirteen years of unexplained inaction, the Court concludes that Defendants
10 should in the interest of fairness and equity be given notice and an opportunity to be heard on
11 Plaintiff's intention to seek foreclosure of the mortgage involved. *See L & T Int'l Corp. v. Benavente*,
12 5 NMI 120, 121 (1997) (“[f]oreclosure of a mortgage is an equitable proceeding”); NMI Const. art.
13 IV, § 2 (providing that the Superior Court shall have original jurisdiction in all cases in equity and at
14 law and shall have all inherent powers necessary to the complete exercise of its duties and
15 jurisdiction).¹ Accordingly, this Court requires the submission of an accurate and more detailed
16 accounting of the debt than what was provided in the *ex parte* motion. *See In re Genay-Wolf*, No.
17 09-20810-TLM, 2012 Bankr. LEXIS 3200, at *11 (Bankr. D. Idaho July 12, 2012) (stating that in *ex*
18 *parte* proceedings, a lawyer “shall” inform the tribunal of all material facts known to the lawyer
19 which will enable the tribunal to make an informed decision, whether or not the facts are adverse)
20 (quoting ABA Model Rule of Professional Conduct 3.3(d)).

21 For all the reasons noted above, this Court finds Plaintiff's *ex parte* motion lacking and
22 insufficient. *See Norita v. Norita*, 4 NMI 381, 385 (1996) (stating that *ex parte* practice, and the
23

24 ¹ The Court notes further that 2 CMC § 4537(e) is the statutory provision allowing a person to be appointed by the Court to sell mortgaged property and provides that notice “as may be prescribed by the court” shall be made by the person appointed to sell the mortgaged property.

1 orders which may be obtained on an *ex parte* basis, should be subjected to careful control by the
2 courts and because of its non-adversarial nature, there is always a danger of misuse of an *ex parte*
3 application); *In re Lizama*, 2008 MP 20 ¶ 11 (stating that an *ex parte* communication is defined as
4 contact that does not involve all interested parties to a case and is more importantly one that advances
5 only a certain party's interest). This is true even though Defendants are in default given this Court's
6 discretion as provided for in the Northern Mariana Islands Rules of Civil Procedure to require service
7 of motions and other documents (such as a motion to appointment of a person to sell mortgaged
8 property) on a party who is in default. See NMI R. Civ. P. 5(a)(2) (no service is required on a party
9 who is in default for failing to appear, unless otherwise ordered by the court).

10 IV. CONCLUSION

11 Based on the matters adduced and for good cause shown, Plaintiff's *ex parte* motion is hereby
12 DENIED. Further, given the long period of time for which this case has sat inactive—and given
13 Plaintiff's insufficient effort to provide this Court with accurate baseline information—it is hereby
14 ORDERED that Plaintiff shall submit an accounting containing an accurate information related to
15 the underlying debt related to the Note and a reporting the payments made and showing all charges
16 and interest now claimed due in its *ex parte* motion on or before July 31, 2020.

17 For good cause shown, a Status Conference is hereby set on August 4, 2020 at 9:00 a.m.
18 before Associate Judge Wesley M. Bogdan and all parties are ordered to attend. Plaintiff shall cause
19 service of this Order on Defendants.

20 **IT IS SO ORDERED** this 17th day of June, 2020.

21
22 /s/
23 **WESLEY M. BOGDAN**, Associate Judge