

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	No. 09-2537-KHV
)	
DENNIS D. WAHL, et al.,)	
)	
Defendants.)	
_____)	

MEMORANDUM AND ORDER

The government filed this foreclosure action against Dennis D. Wahl and Ann K. Wahl to recover the outstanding balance on certain loans which were secured by mortgages pledging various tracts of land in Washington County, Kansas.¹ On July 12, 2010, the government filed its motion for summary judgment. See Plaintiff's Motion For Summary Judgment (Doc. #27). Under D. Kan. Rule 6.1(d)(2), defendants had until August 2, 2010 to file a response. To date, defendants have not filed a response. By failing to file a timely response, defendants waived the right to file a response or to controvert the facts asserted in the summary judgment motion. Reed v. Bennett, 312 F.3d 1190, 1194 (10th Cir. 2002); see D. Kan. Rule 7.4 (failure to timely file response brief shall constitute waiver of right to file brief except on showing of excusable neglect). When deciding whether to enter summary judgment against a non-responding party, the Court cannot simply grant the motion as uncontested under D. Kan. Rule 7.4, but instead must determine whether summary

¹ In this action, the government also named defendants who may claim an interest in the tracts of land. See Complaint (Doc. #1) filed October 19, 2009. These defendants include A-F Agronomy, Farmers Cooperative Elevator Association, Farmers Cooperative Association (Hanover, Kansas), Farmers Cooperative Association (Dorchester, Nebraska), Twin States Energy (Beatrice, Nebraska), Twin State Energy, LLC (Beloit, Kansas), Doug Harms, Stanton Farm Services, Inc./Bruce Stanton, Kansas Department of Revenue and Ambulance District #33 (Fairbury, Nebraska). See id.

judgment is appropriate under Rule 56(e)(2), Fed. R. Civ. P. For substantially the reasons stated in the Memorandum In Support Of Plaintiff's Motion For Summary Judgment (Doc. #28) filed July 12, 2010, the Court sustains plaintiff's motion for summary judgment. In particular, the Court finds that (1) the Wahls delivered, for value, promissory notes to the United States in exchange for loans from the United States, (2) the Wahls delivered real estate mortgages to the United States to secure the obligations they owed to the United States, (3) the United States is the owner and holder of these promissory notes and real estate mortgages, (4) the Wahls have failed to make timely payments of one or more of their principal or interest obligations, (5) the mortgage liens of the United States are superior to those recorded by defendant Twin States Energy, LLC on July 28, 2006, in Washington County District Court and by defendant Farmers Cooperative Elevator Association on October 13, 2004, in Washington County District Court,² and (6) as of April 15, 2009, the Wahls owed the government \$87,269.34 in principal and \$61,965.73 in interest, plus interest accruing after April 15, 2009 at the rate of \$13.2641 per day to the date of judgment in this case.

IT IS THEREFORE ORDERED that Plaintiff's Motion For Summary Judgment (Doc. #27) filed July 12, 2010 be and hereby is **SUSTAINED**. On or before **August 30, 2010**, plaintiff shall submit a proposed judgment consistent with this order.

Dated this 16th day of August, 2010 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge

² Twin States Energy, LLC and Farmers Cooperative Elevator Association admit that their interests in the real property are junior and inferior to the interests of the United States.