

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

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 12-1315-CM</b>
	)	
<b>SUSAN M. CHAUVIN; and</b>	)	
<b>THE KANSAS DEPARTMENT</b>	)	
<b>OF REVENUE,</b>	)	
	)	
<b>Defendants.</b>	)	
	)	

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**MEMORANDUM AND ORDER**

This is a breach of contract case arising from an assumption agreement and promissory note executed by defendant Susan Chauvin in favor of the United States Department of Agriculture (“USDA”). Plaintiff seeks a monetary judgment, foreclosure of the real estate mortgages securing the promissory note and assumption agreement, and sale of the real property identified in the mortgages in partial satisfaction of the judgment.

This matter is before the court on plaintiff’s motion for summary judgment against defendant Chauvin (Doc. 15). Defendant Chauvin opposes the motion, arguing that there is a genuine dispute as to whether the USDA completed the loan servicing requirements of the Housing Act of 1949. For the following reasons, the court grants plaintiff’s motion.

**I. Factual Background<sup>1</sup>**

On April 10, 1992, defendant Susan Chauvin signed and delivered to the USDA an assumption agreement in which she agreed to assume the entire unpaid indebtedness of \$34,012.80 plus interest at 8.25% per annum due under a promissory note signed on September 18, 1985, by Ronald E. Hayes

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<sup>1</sup> The following facts are properly supported and not genuinely disputed. *See* Fed. R. Civ. P. 56(c) (explaining procedures for supporting factual positions).

and Debbie A. Hayes. This assumption agreement is secured by a real estate mortgage filed of record with the Register of Deeds of Johnson County, Kansas, on September 18, 1985, on the following property:

Beginning at a point 171 feet West and 100 feet South of the Northeast corner of Block 10, SPRAGUES ADDITION, in the City of Spring Hill, said point being on the easterly right-of-way line of Main Street; thence East 176.96 feet parallel to the North Line of said Block 10; thence Southerly 51.20 feet; thence South 23.89 feet parallel to said right-of-way line of Main Street; thence West 180 feet parallel to the North line of said Block 10; thence North 75 feet to the point of beginning, all in SPRAGUES ADDITION, City of Spring Hill, Johnson County, Kansas, according to the recorded plat thereof.

(Doc. 16-1 at 7.)

Also on April 10, 1992, in consideration for a Rural Housing loan, defendant Chauvin signed and delivered to the USDA a promissory note in which she promised to pay the USDA the sum of \$9,360.00 with interest thereon at 8.25% per annum. This promissory note is secured by a real estate mortgage filed of record with the Register of Deeds of Johnson County, Kansas, on April 10, 1992, on the same property identified above.

Subsequently, defendant Chauvin failed to timely pay to the USDA installments of principal and interest when due under the terms of the assumption agreement and the promissory note. The USDA completed the loan servicing requirements of the Housing Act of 1949 as amended. And, on September 8, 2010, the debt owed by defendant Chauvin to the USDA was accelerated for failure to make payments as required and demand was made for payment in full.

No payment has been received by the USDA. There is currently due and owing to the USDA on the defaulted account of defendant Chauvin the total sum of \$40,884.27, as of June 20, 2013, plus interest accruing from and after June 20, 2013, at the daily rate of \$8.250, plus future recoverable advances.

## II. Legal Standards

Summary judgment is only appropriate when there are no genuine disputes as to any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. *Sally Beauty Co. v. BeautyCo, Inc.*, 304 F.3d 964, 971 (10th Cir. 2002). Once the moving party makes this showing, the burden shifts to the nonmoving party to go beyond the pleadings and set forth specific facts showing a genuine issue for trial. *Id.*; *L & M Enters. v. BEI Sensors & Sys. Co.*, 231 F.3d 1284, 1287 (10th Cir. 2000) (“Unsupported conclusory allegations . . . do not create a genuine issue of fact.”). In ruling on a summary judgment motion, the court views the record in the light most favorable to the nonmoving party. *L & M Enters.*, 231 F.3d at 1287.

## III. Analysis

To prevail on its breach of contract claim, plaintiff must prove the existence of a valid contract, an obligation or duty arising out of the contract, a breach of the duty, and damages resulting from the breach. *Pryor v. United States*, 85 Fed. Cl. 97, 104 (Fed. Cl. 2008); *Stechschulte v. Jennings*, 298 P.3d 1083, 1098 (Kan. 2013). Plaintiff has provided evidence to support all of these elements.<sup>2</sup>

Defendant Chauvin signed and delivered the assumption agreement and the promissory note on April 10, 1992. (Doc. 14 at 3–4; Doc. 16 at 2; Doc. 16-1 at 5 and 10–12.) In the assumption agreement, she agreed to assume the entire unpaid indebtedness due under the promissory note signed by Ronald and Debbie Hayes. (Doc. 14 at 3–4; Doc. 16 at 2; Doc. 16-1 at 5.) And, in the promissory note, she agreed to pay the USDA the sum of \$9,360.00 with interest thereon at 8.25% per annum. (Doc. 14 at 3–4; Doc. 16 at 2; Doc. 16-1 at 10.) Defendant Chauvin failed to make the required principal and interest payments. (Doc. 16 at 4; Doc. 16-1 at 3.) And plaintiff has demonstrated that it has been damaged in the amount of \$40,884.27, as of June 20, 2013, as a result of the breaches, and is

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<sup>2</sup> The parties do not dispute the first two elements. (Doc. 14 at 8.)

entitled to interest accruing from and after June 20, 2013, at the daily rate of \$8.250, plus future recoverable advances. (Doc. 16 at 9; Doc. 16-2 at 1–3.) The court determines that this evidence is sufficient to shift the burden to defendant Chauvin to set forth specific facts demonstrating that a genuine issue of material fact exists and that a reasonable factfinder could rule in her favor on plaintiff’s breach of contract claim.

In her opposition,<sup>3</sup> defendant Chauvin “question[s] the fact that the USDA completed the loan servicing requirements of the Housing Act of 1949.” (Doc. 18 at 1.) But she does not provide any evidence explaining or supporting her position. Her mere conjecture that plaintiff failed to comply with the loan servicing requirements of the Housing Act of 1949 is an insufficient basis for denial of plaintiff’s properly supported summary judgment motion. *See Ball v. Renner*, 54 F.3d 664, 665 (10th Cir. 1995) (explaining that if the movant satisfies its initial burden, the “burden shifts to [the nonmovant] to demonstrate the existence of a material issue by identifying specific facts in the record sufficient to create the possibility that a reasonable factfinder might adopt [the nonmovant’s] view”).

Defendant Chauvin additionally suggests that the “act makes reference to the fact that loans should not exceed 4-percent interest,” that she should have received grants for improvements, and that she should have received some subsidy at the time she lost her job. (Doc. 18 at 1.) Defendant Chauvin does not elaborate on these arguments. For example, she does not identify any specific provision that caps the interest rate at four percent or explain how that provision applies to the assumption agreement or promissory note. Similarly, she provides no evidence that she qualified for the improvement grants or subsidies.

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<sup>3</sup> Defendant Chauvin failed to timely file an opposition. The court entered an order requiring defendant Chauvin to: (1) show cause why she failed to timely file a response to plaintiff’s summary judgment motion, and (2) file a response. (Doc. 17.) Defendant Chauvin filed an email response on August 13, 2013. Her response does not explain why she timely failed to oppose plaintiff’s motion. Despite this shortcoming, the court finds she adequately responded to the show cause order and will consider her opposition.

The court is mindful of defendant Chauvin's pro se status and, therefore, has liberally construed her papers. *See Drake v. City of Fort Collins*, 927 F.2d 1156, 1159 (10th Cir. 1991) (instructing courts to liberally construe pro se pleadings). But the court cannot assume the role of her advocate and construct arguments on her behalf based on cryptic references. *See id.* (“[T]he court will not construct arguments or theories for the [pro se litigant] in the absence of any discussion of those issues.”). Likewise, the court cannot search the record for facts supporting her positions. Because defendant Chauvin failed to develop these additional issues in a manner allowing meaningful judicial review, the court rejects them. Defendant Chauvin fails to demonstrate a genuine issue for trial, so the court grants plaintiff's motion.

Plaintiff also seeks to foreclose on the real estate mortgages securing the promissory note and assumption agreement. It is undisputed that defendant Chauvin executed the promissory note and assumption agreement and that these contracts are secured by mortgages. (Doc. 14 at 3–4; Doc. 16 at 2–3.) The facts also establish that defendant Chauvin is in default under the terms of the promissory note, the assumption agreement, and the mortgages (*See, e.g.*, Doc. 16-1 at 3 (stating that defendant Chauvin failed to make payments).) And the facts demonstrate that plaintiff is authorized to foreclose on the property mortgaged as security for the promissory note and assumption agreement. (*See, e.g.*, Doc. 16-1 at 6–9 and 13–16 (providing terms of mortgages).) None of defendant Chauvin's arguments require a different outcome.

**IT IS THEREFORE ORDERED** that plaintiff's Motion for Summary Judgment (Doc. 15) is granted.

**IT IS FURTHER ORDERED** that plaintiff shall file a proposed judgment, order, and journal entry by October 4, 2013. Defendants have until October 15, 2013, to file any objections to plaintiff's

proposed judgment, order, and journal entry. Defendants may not raise arguments or issues that could have been previously raised or that have been previously addressed.

Dated this 23<sup>rd</sup> day of September, 2013, at Kansas City, Kansas.

s/ Carlos Murguia  
**CARLOS MURGUIA**  
United States District Judge