

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-00666-BNB

ANN LEMBERG,

Plaintiff,

v.

US BANKRUPTCY COURT, and  
MUTUAL OF OMAHA BANK,

Defendants.

**FILED**  
UNITED STATES DISTRICT COURT  
DENVER, COLORADO

APR -3 2009

GREGORY C. LANGHAM  
CLERK

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ORDER OF DISMISSAL

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Plaintiff, Ann Lemberg, has filed a complaint. She has been granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

Some background information is necessary to understand the procedural posture of this case. On September 23, 2008, Ms. Lemberg filed for relief in the United States Bankruptcy Court for the District of Colorado under Chapter 13 of the Bankruptcy Code. *See In re Lemberg*, Bankr. No. 08-24668-HRT (Bankr. D. Colo. filed Sept. 23, 2008). The bankruptcy court later entered an order converting Ms. Lemberg's Chapter 13 case to a case under Chapter 11 of the Bankruptcy Code. Mutual of Omaha moved for relief from stay under 11 U.S.C. § 362(d)(1) and (d)(2). On January 9, 2009, after an evidentiary hearing, the bankruptcy court issued a ten-page order granting the bank's motion.

Ms. Lemberg appealed the January 9, 2009, order to the United States Bankruptcy Appellate Panel of the Tenth Circuit (BAP) and filed a motion to stay. On

January 22, 2009, the BAP denied the motion to stay without prejudice, noting that the bankruptcy court had not yet ruled on a motion to stay the January 9 order filed with that court. On February 20, 2009, the bankruptcy court held an evidentiary hearing on the motion to stay, and denied the motion in a six-page order dated February 24, 2009. ***See In re Lemberg***, BAP No. CO-09-002 (BAP 10th Cir. Mar. 23, 2009). On March 17, 2009, Ms. Lemberg filed with the BAP an urgent motion to stay the February 24 order pending appeal. On March 19, 2009, Mutual of Omaha filed a response to the motion for stay. On March 23, 2009, the BAP denied Ms. Lemberg's motion to stay the February 24 order pending appeal. In the instant action, Ms. Lemberg appears to be attempting to appeal from the BAP's March 23, 2009, order.

According to the March 23, 2009, order of the BAP, Ms. Lemberg owns a four-acre tract of land known as 50 North Gulch Road, Boulder, Colorado. On August 5, 2005, Ms. Lemberg executed a promissory note in the amount of \$216,000 to Mutual of Omaha's predecessor, Peak National Bank, which was secured by a deed of trust on the property. The loan was modified on October 6, 2006, to increase the principal amount of \$244,000, and to extend its term to August 5, 2007. On August 5, 2007, Ms. Lemberg defaulted on the note. According to Mutual of Omaha, Ms. Lemberg has not made a payment on the debt, and the current outstanding balance, including interest and attorney's fees, is approximately \$315,000. A foreclosure sale of the property is scheduled for March 25, 2009. Also according to Mutual of Omaha, Ms. Lemberg will have seventy-five days after the sale in which to exercise her right to redeem the property.

Ms. Lemberg's recourse is not with this Court. To challenge the March 23, 2009, decision of the BAP, Ms. Lemberg must appeal to the United States Court of Appeals for the Tenth Circuit. **See** 28 U.S.C. § 158(d)(1); **see also** Bankruptcy Rule 8002. Therefore, this Court lacks subject matter jurisdiction over the instant action.

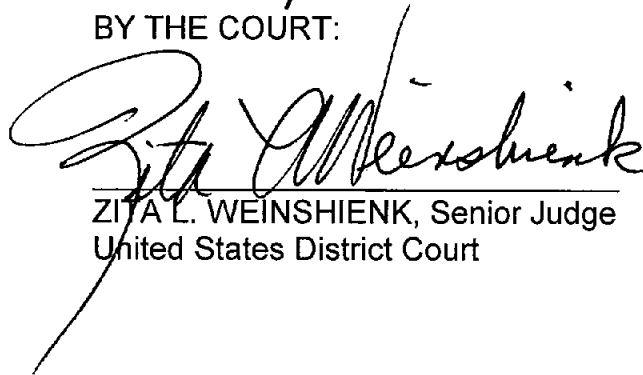
Accordingly, it is

ORDERED that the complaint and the action are dismissed for lack of subject matter jurisdiction. It is

FURTHER ORDERED the emergency request for a temporary restraining order is denied as moot.

DATED at Denver, Colorado, this 3 day of April, 2009.

BY THE COURT:



ZITA L. WEINSHIENK, Senior Judge  
United States District Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

**CERTIFICATE OF MAILING**

Civil Action No. 09-cv-00666-BNB

Ann Lemberg  
5059 B. Valmont Road  
Boulder, CO 80301

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 4/2/09

GREGORY C. LANGHAM, CLERK

By:   
Deputy Clerk