

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Action No. 12-cv-01608-REB-KMT

CAREY WAYNE BROOKER, and
LENORA RENEE BROOKER,

Plaintiffs,

v.

RUSSELL JAY GOULD,
STACEY L. ARONOWITZ, Attorney Reg. #36290,
SUSAN J. HENDRICK, Attorney Reg. #33196,
MARCH L. MCDERMOTT, Attorney Reg. #38030,
ARONOWITZ & MECKLENBUG, LLP,
FEDERAL NATIONAL MORTGAGE ASSOCIATION,
BANK OF AMERICA, N.A.,
BRIAN MOYNIHAN,
BAC HOME LOANS SERVICING, LP,
BAC HOME LOAN SERVICING, LP,
BARBARA DESOER,
DONNA LEONETTI,
LAS ANIMAS COUNTY PUBLIC TRUSTEE,
LAS ANIMAS COUNTY TREASURER,
TRINIDAD ABSTRACT & TITLE COMPANY,
TOWN AND COUNTRY ESTATES REALTY, INC.,
EDGAR J. TROMMETER, license ER1326745
LAS ANIMAS COUNTY SHERIFF'S DEPARTMENT,
JAMES W. CASIAS,
LAS ANIMAS COUNTY COURT,
LAS ANIMAS COUNTY JUDGE BRUCE A. BILLINGS,
LAS ANIMAS COUNTY REVIEW CLERK EMMA BARROS,
DISTRICT ADMINISTRATOR/CLERK OF COURT ROBERT KREIMAN, and
SANTA FE TRAIL RANCH,

Defendants.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the **Recommendation of United States Magistrate Judge [#8]**¹ filed October 25, 2012. No objections the recommendation have been filed by the parties. Therefore, I review the recommendation only for plain error. **See *Morales-Fernandez v. Immigration & Naturalization Service***, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding no error, much less plain error, in the magistrate judge's recommended disposition, I find and conclude that the recommendation should be approved and adopted.

The magistrate judge recommends that this case be dismissed as a sanction for the plaintiffs' failure to prosecute this case and failure to comply with the orders of this court. Before choosing dismissal as a just sanction, a court ordinarily should consider a number of factors, including: (1) the degree of actual prejudice to the defendant; (2) the amount of interference with the judicial process; (3) the culpability of the litigant; (4) whether the court warned the party in advance that dismissal of the action would be a likely sanction for noncompliance, and (5) the efficacy of lesser sanctions. ***Ehrenhaus v. Reynolds***, 965 F.2d 916, 921 (10th Cir. 1992); ***Reed v. Bennett***, 312 F.3d 1190, 1195 (10th Cir. 2002). "Only when the aggravating factors outweigh the judicial system's strong predisposition to resolve cases on their merits is dismissal an appropriate sanction." ***Reed***, 312 F.3d at 1195 (**quoting *Meade v. Grubbs***, 841 F.2d 1512, 1521 n. 7 (10th Cir. 1988) (citations omitted)).

¹ "[#8]" is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. ***Morales-Fernandez***, 418 F.3d at 1122. In addition, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

The magistrate judge properly considered the *Ehrenhaus* factors in the context of the facts of this case. Ultimately, the magistrate judge recommends that this case be dismissed with prejudice as a sanction for the plaintiffs' failure to prosecute this case and failure to comply with the orders of this court. I agree. The magistrate judge recommends also that the court impose additional sanctions against the plaintiffs, including an order to pay the defendants' costs and attorney fees. In this order, I will grant the defendants an opportunity to file a motion for an award of attorney fees, if they choose to do so.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge [#8]** filed October 25, 2012, is approved and adopted as an order of this court;
2. That under FED. R. CIV. P. 41(b), this case is dismissed with prejudice;
3. That judgment shall enter in favor of the defendants, Russell Jay Gould, Stacey L. Aronowitz, Susan J. Hendrick, Marcy L. McDermott, Aronowitz & Mecklenburg, LLP, Federal National Mortgage Association, Bank of America, N.A., Brian Moynihan, BAC Home Loans Servicing, LP, BAC Home Loan Servicing, LP, Barbara Desoer, Donna Leonetti, Las Animas County Public Trustee, Las Animas County Treasurer, Trinidad Abstract & Title Company, Town and Country Estates Realty, Inc., Las Animas County Sheriff's Department, James W. Casias, Las Animas County Court, Las Animas County Judge Bruce A. Billings, Las Animas County Review Clerk Emma Barros, District Administrator/Clerk of Court Robert Kreiman, and Santa Fe Trail Ranch, and against the plaintiffs, Carey Wayne Brooker and Lenora Renee Brooker, jointly and severally;
4. That the defendants are awarded their costs to be taxed by the clerk of the

court under Fed. R. Civ. P. 54(d)(1) and D.C.COLO.LCivR 54.1; and

5. That if the defendants seek an award of attorney fees, the defendants may file a motion seeking such an award on or before February 20, 2013; and

6. That any response and reply shall be marshaled under D.C.COLO.LCivR 7.1C.

Dated January 28, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge