

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MTGLQ INVESTORS, LP,

Plaintiff,

vs.

Civ. No. 17-487 KG/LF

MONICA L. WELLINGTON,

Defendant.

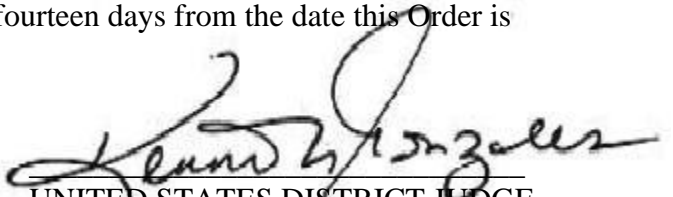
ORDER

This matter comes before the Court *sua sponte*. On December 20, 2019, the Court entered a Judgment of Foreclosure and Sale, and Appointment of Special Master. (Doc. 204). On December 31, 2019, Defendant filed a Notice of Appeal. (Doc. 205). Shortly thereafter, on January 3, 2020, Plaintiff filed Plaintiff's Motion for Award of Attorney Fees and Costs. (Doc. 209). Defendant then filed a response to that motion on January 17, 2020. (Doc. 211). Before Plaintiff's time to reply to the response expired, the Court entered an order on January 28, 2020, staying the execution of the judgment pending the appeal. (Doc. 213). Then, on February 4, 2020, Defendant filed a Notice of Completion of Briefing noting that Plaintiff did not file a reply. (Doc. 215).

In light of the stay of the execution of the judgment pending the appeal, Plaintiff could have reasonably believed that it cannot file a reply until the Tenth Circuit Court of Appeals decides the appeal. However, notwithstanding the appeal and the stay of the execution of the judgment, the issue of attorney fees and costs is a collateral matter that the Court has jurisdiction to rule on at this time. *See McKissick v. Yuen*, 618 F.3d 1177, 1196-97 (10th Cir. 2010) (explaining that "outstanding fee issues for the litigation at hand are considered collateral to the

final judgment,” thereby allowing a district court to “retain[] jurisdiction over the fee issue while the court of appeals has jurisdiction over the appeal”); *cf. Anderson v. Seven Falls Co.*, 633 Fed. Appx. 691, 695 (10th Cir. 2015) (finding district court not faced with fees claim for litigation at hand, i.e., claim that party “must, by statute or contract, pay”). The Court, therefore, will provide Plaintiff an opportunity to file a reply while the appeal is pending.

IT IS ORDERED that Plaintiff may file a reply to Plaintiff’s Motion for Award of Attorney Fees and Costs (Doc. 209) no later than fourteen days from the date this Order is entered.



UNITED STATES DISTRICT JUDGE