

RECEIVED

OCT 23 2017

LINCOLN COUNTY SHERIFF'S OFFICE
NEWPORT, OR
mm

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY LINCOLN

WELLS FARGO BANK, N.A., its successor
in interest and/or assigns,

Plaintiff,

v.

JAMES R. JOHNSTONE; ANN L. GAGG;
KURT E. FREITAG, TRUSTEE OF
PROFESSIONAL SERVICE RESOURCE
GROUP PROFIT SHARING TRUST;
WEST COAST BANK, nka COLUMBIA
STATE BANK; MERITAGE
HOMEOWNER'S ASSOCIATION; AND
OCCUPANTS OF THE PREMISES;

Defendants.

Case No. 131998

WRIT OF EXECUTION IN
FORECLOSURE
(amended)

TO THE SHERIFF OF LINCOLN COUNTY:

WHEREAS, on the 24th day of August, 2017, in the above entitled Court, a
General Judgment and Sale by Default ("the Judgment") was enrolled and docketed
in the above entitled cause, in favor of Plaintiff. The Judgment was assigned to
Meritage Homeowner's Association ("Judgment Creditor") by Assignment of
Judgment entered herein on September 7, 2017 ("the Assignment"). Meritage
Homeowner's Association's mailing address is in care of Mark C. Hoyt, Sherman
Sherman Johnnie & Hoyt, LLP, PO Box 2247, Salem, OR 97308, and

WHEREAS, a true copy of the Judgment and the Assignment are attached
hereto and made a part hereof.

NOW THEREFORE, IN THE NAME OF THE STATE OF OREGON, you

SHERMAN, SHERMAN, JOHNNIE, & HOYT, LLP
693 Chemeketa St. NE/ Post Office Box 2247
Salem, Oregon 97308-2247
(503)364-2281 FAX: (503)370-4308

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

SHERMAN, SHERMAN, JOHNNIE, & HOYT, LLP
693 Chemeketa St. NE/ Post Office Box 2247
Salem, Oregon 97308-2247
(503)364-2281 FAX: (503)370-4308

1 are hereby commanded to seize and, upon payment of the Sheriff's reasonable costs
2 of taking, to sell in the manner prescribed by law for the sale of real property upon
3 execution (subject to redemption) all of the interest that Defendants James R.
4 Johnstone and Ann L. Gagg had on January 14, 2010, and all the interest all
5 Defendants had on February 8, 2010, the recording date of the deed of trust recorded
6 as Instrument No 2010-01495, and all the interest which said Defendants had
7 thereafter in the real property known as 52 Northwest 33rd Place A, Newport, Oregon,
8 and more particularly described on page three of the Judgment attached hereto, and as
9 follows:

10 LOT 18, MERITAGE NO. 3, A PLANNED UNIT DEVELOPMENT IN THE
11 CITY OF NEWPORT, COUNTY OF LINCOLN AND STATE OF OREGON.

12 TOGETHER WITH ACCESS OVER PRIVATE ROADS AS SET FORTH IN
13 DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
14 FOR MERITAGE RECORDED 12-19-03, DOCUMENT NO. 200321490,
15 LINCOLN COUNTY FILM RECORDS.

16 to satisfy the sum of **\$449,921.48** plus accrued pre-judgment interest at the
17 rate of \$41.76 per diem from April 28, 2017 until August 24, 2017, the date of entry
18 of judgment (total sum of prejudgment interest: **\$4,927.68**); plus interest on **the total**
19 **of said sums (\$454,849.16)**, at the rate of 9% per annum (\$112.15 per diem) from
20 the date of judgment until paid, AND the costs of this writ, making due return within
21 60 days after you receive this writ:

22 *Interest and totals calculated by attorney.*



Signed: 10/19/2017 02:46 PM

Circuit Court Clerk Steven Zalewski

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
IN AND FOR THE COUNTY OF LINCOLN

WELLS FARGO BANK, N.A., its successors in
interest and/or assigns,

Plaintiff,

v.

JAMES R. JOHNSTONE; ANN L. GAGG;
KURT E. FREITAG, TRUSTEE OF
PROFESSIONAL SERVICES RESOURCE
GROUP PROFIT SHARING TRUST; WEST
COAST BANK NKA COLUMBIA STATE
BANK; MERITAGE HOMEOWNER'S
ASSOCIATION; AND OCCUPANTS OF THE
PREMISES,

Defendants.

Case No. 131998

GENERAL JUDGMENT OF
FORECLOSURE AND SALE BY
DEFAULT AGAINST:

- (1) JAMES R. JOHNSTONE
- (2) ANN L. GAGG
- (3) WEST COAST BANK NKA
COLUMBIA STATE BANK

STIPULATED JUDGMENT AS TO:

- (1) KURT E. FREITAG, TRUSTEE OF
PROFESSIONAL SERVICES
RESOURCE GROUP PROFIT
SHARING TRUST
- (2) MERITAGE HOMEOWNER'S
ASSOCIATION

1.

THIS MATTER coming regularly before the Court on this day and it appearing from the record
herein that plaintiff Wells Fargo Bank, N.A., its successors in interest and/or assigns ("Plaintiff"),
filed its Complaint for deed of trust foreclosure; that all Defendants subject to this action were duly

1 served with the Summons and Complaint as required by law; that defendants James R. Johnstone; Ann
2 L. Gagg; and West Coast Bank nka Columbia State Bank failed to appear; and that an Order of Default
3 has been entered against them on Plaintiff's Complaint; that Plaintiff and defendants Kurt E. Freitag,
4 Trustee of Professional Services Resource Group Profit Sharing Trust and Meritage Homeowner's
5 Association have agreed to stipulate to this general judgment; that Occupants of the Premises were
6 dismissed from this action; and consequently this General Judgment of foreclosure is submitted in
7 accordance with UTCR 5.100 (3)(c).
8

9 2.

10 Plaintiff hereby requests this general judgment for foreclosure and sale be entered into the
11 Court's register to accomplish the following: to foreclose any and all interest of defendants James R.
12 Johnstone; Ann L. Gagg; Kurt E. Freitag, Trustee of Professional Services Resource Group Profit
13 Sharing Trust; West Coast Bank nka Columbia State Bank; and Meritage Homeowner's Association in
14 the real property subject to this foreclosure action, located at 52 Northwest 33rd Place A, Newport,
15 Oregon 97365 (the "Property").
16

17 3.

18 The court being fully advised in the Premise, finding good cause exists so this general judgment
19 of foreclosure and sale may be entered in favor of Plaintiff and against James R. Johnstone; Ann L.
20 Gagg; Kurt E. Freitag, Trustee of Professional Services Resource Group Profit Sharing Trust; West
21 Coast Bank nka Columbia State Bank; and Meritage Homeowner's Association, all of them, it is hereby
22

23 ORDERED AND ADJUDGED:

24 4.

25 That the Deed of Trust dated January 14, 2010, executed by James R. Johnstone and Ann L.
26

1 Gagg for the benefit of Wells Fargo Bank, N.A. ("Deed of Trust"), recorded on February 8, 2010 as
2 Instrument No. 2010-01495 in the official records of Lincoln County, Oregon, is a valid lien for the
3 amount due and owing as set forth in Paragraph 13 herein, against the Property situated in Lincoln
4 County, Oregon, and described as follows

5
6 LOT 18, MERITAGE NO. 3, A PLANNED UNIT DEVELOPMENT IN THE
CITY OF NEWPORT, COUNTY OF LINCOLN AND STATE OF OREGON.

7 TOGETHER WITH ACCESS OVER PRIVATE ROADS AS SET FORTH IN
8 DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
9 FOR MERITAGE RECORDED 12-19-03, DOCUMENT NO. 200321490,
LINCOLN COUNTY FILM RECORDS.

10 5.

11 That the lien of the Deed of Trust is superior to any interest, lien, or claim of defendants James
12 R. Johnstone; Ann L. Gagg; Kurt E. Freitag, Trustee of Professional Services Resource Group Profit
13 Sharing Trust; West Coast Bank nka Columbia State Bank; and Meritage Homeowner's Association in
14 the Property, and that said Deed of Trust is hereby foreclosed by this Court on the Property.

15 6.

16 That defendants James R. Johnstone; Ann L. Gagg; Kurt E. Freitag, Trustee of Professional
17 Services Resource Group Profit Sharing Trust; West Coast Bank nka Columbia State Bank; and
18 Meritage Homeowner's Association, each of them, and all parties claiming by, through, or under them
19 as purchasers, encumbrances, or otherwise, are forever barred and foreclosed of all interests, liens, or
20 claims in the Property, and every portion thereof, excepting only the statutory right of redemption
21 provided by the laws of the State of Oregon.

22 7.

23 That defendants James R. Johnstone; Ann L. Gagg; Kurt E. Freitag, Trustee of Professional
24 Services Resource Group Profit Sharing Trust; West Coast Bank nka Columbia State Bank; and
25
26

1 Meritage Homeowner's Association, all of them, are not entitled to a homestead exemption as against
2 Plaintiff's Deed of Trust.

3
4 8.

5 That all of the right, title and interest which James R. Johnstone and Ann L. Gagg had on
6 January 14, 2010, the date of the Deed of Trust, and all of the right, title and interest defendants James
7 R. Johnstone; Ann L. Gagg; Kurt E. Freitag, Trustee of Professional Services Resource Group Profit
8 Sharing Trust; West Coast Bank nka Columbia State Bank; and Meritage Homeowner's Association
9 and any successor thereafter had in and to the real Property is hereby ordered to be sold by law, and the
10 proceeds of sale shall be applied first toward the sheriff's fees and costs of sale, then toward the
11 satisfaction of the amount due and owing set forth in Paragraph 13 herein; and the surplus, if any, to the
12 Clerk of the Court to be disbursed to such party or parties as may establish their right thereto.

13
14 9.

15 That Plaintiff may become purchaser at the sheriff's sale of the Property and may bid up to the
16 aggregate amount due and owing set forth in Paragraph 13 herein, plus interest from the date of this
17 Judgment until sale without advancing any cash except money required for the sheriff's sale.

18
19 10.

20 That the Plaintiff, if the successful purchaser of the Property at the sheriff's sale, reserves the
21 right to motion the court after sale for exclusive and immediate possession of the Property through the
22 issuance and enforcement of a writ of assistance, should defendants James R. Johnstone; Ann L. Gagg;
23 Kurt E. Freitag, Trustee of Professional Services Resource Group Profit Sharing Trust; West Coast
24 Bank nka Columbia State Bank; and Meritage Homeowner's Association refuse to surrender possession
25 of the Property immediately upon the purchaser's demand for possession.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

11.

STIPULATION

That Plaintiff and defendants Kurt E. Freitag, Trustee of Professional Services Resource Group Profit Sharing Trust and Meritage Homeowner's Association hereby agree to stipulate that the foreclosure judgment shall be assigned to Meritage Homeowner's Association prior to the occurrence of the foreclosure sale.

12.

That Plaintiff is entitled to, and is hereby awarded its attorney fees and costs incurred in this action, and that Plaintiff's attorney fees in the amount of \$42,924.50 and its litigation costs in the amount of \$4,219.50, shall be, and is hereby declared additional amounts secured by and hereinafter shall be made part of the amount of the debt secured by Plaintiff's Deed of Trust.

DECLARATION OF DEBT SECURED BY DEED OF TRUST

(Pursuant to Senate Bill 368)

13.

Under the terms of the Deed of Trust and the promissory note dated January 14, 2010, in the principal amount of \$316,878.00, there is now due and owing the following amounts, to be hereinafter described as the Amount Due:

Attorneys' Fees and Costs

Attorneys' Fees		\$42,924.50
Title Report	\$720.00	
Filing Fees	\$805.00	
Recording Fee - Lis Pendens	\$48.00	
Process Service Fees	\$1,700.00	
Publication Costs	\$416.50	
Datedown Endorsement	\$100.00	
Deposition Costs	\$430.00	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Total Costs \$4,219.50

Total Attorneys' Fees and Costs \$47,144.00

Lenders' Principal and Interest

Principal Balance \$304,869.25
Accrued Interest from July 1, 2012, to April 28, 2017, \$73,534.13
@ .05 per diem

Total Principal & Interest \$378,403.38

Lenders' Fees and Costs

Accumulated Late Charges \$255.15
Tax Advances \$22,975.71
Property Inspections \$60.00
Water and Sewer Fees \$1,053.24
Other Inspection Fees \$30.000

Total Lenders' Fees and Costs: \$24,374.10

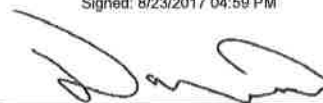
Total Lenders' Principal, Interest, Fees, and Costs: \$402,777.48

Additional pre-judgment interest pursuant to ORS 18.042 from April 28, 2017 to the date entry of judgment at the contract rate of interest (\$41.76 per diem)

Post-Judgment interest thereafter on the Total Amount Due at the contract rate of interest, or 9.000% per annum, whichever is greater.

Total Amount Due \$449,921.48

Signed: 8/23/2017 04:59 PM



Circuit Court Judge David V. Cramer

1 Jointly Presented by:

2 **RCO LEGAL, P.S.**

3 By s/Calvin Knickerbocker DATED August 22, 2017

4 Calvin Knickerbocker, OSB # 050110
5 Attorneys for Plaintiff
6 511 SW 10th Ave., Ste. 400
7 Portland, OR 97205
T: (503) 977-7840 F: (503) 977-7963
cknickerbocker@rcolegal.com

8 **GCH LAW LLC**

9
10 By Gregory C. Hansen DATED August 22, 2017

11 Gregory C. Hansen, OSB # 892566
12 Attorneys for Defendants Kurt E.
13 Freitag and Meritage Homeowner's
14 Association
15 570 Liberty Street SE, Ste. 100
16 Salem, OR 97301
17 T: (503) 378-9101 F: (503) 485-5444
18 greg@gchlaw.net
19
20
21
22
23
24
25
26

1 **CERTIFICATE OF UTCR 5.100 COMPLIANCE**

2 This Proposed order or judgment is ready for judicial signature because:

- 3 A. The order or judgment was served on the opposing counsel not less than 3 days prior to
4 submission to the court, or mailed to a self-represented party at the party's last known
5 address not less than 7 days prior to submission to the court with a notice of the time period
6 to object.
- 7 B. The order or judgment is accompanied by a stipulation by opposing counsel that no objection
8 exists as to the judgment or order.
- 9 C. The judgment or order is exempt from UTCR 5.100(1) because:
10 a. The judgment or order is a proposed order or judgment presented in open court with
11 the parties present.
12 b. The judgment or order is of a kind that may be presented *ex parte* and has been
13 submitted either in person or by mail *ex parte*.
14 c. The judgment is a proposed judgment after an order for default has already been
15 entered or is being simultaneously requested against the opposing party.
16 d. The proposed judgment is subject to UTCR 10.0099
17 e. The proposed judgment or order is an uncontested probate and protective proceeding.
18 f. This matter is certified to the court under ORS 416.422, 416.430, 416.435, or
19 416.448.
- 20 D. In compliance with UTCR 5.100(2)(b), the drafting party certifies the following as to why
21 the proposed judgment or order is ready for a judicial signature:
- 22 1. Each opposing party affected by this order or judgment has stipulated to the order or
23 judgment, as shown by each opposing party's signature on the document being submitted.
- 24 2. Each opposing party affected by this order or judgment has approved the order or judgment,
25 as shown by signature on the document being submitted or by written confirmation of
26 approval sent to me.
3. I have served a copy of this order or judgment on all parties entitled to service and:
a. No objection has been served on me.
b. I received objections that I could not resolve with the opposing party despite
reasonable efforts to do so. I have filed a copy of the objections I received and
indicated which objections remain unresolved.
c. After conferring about objections, [role and name of opposing party] agreed to
independently file any remaining objection.
4. The relief sought is against an opposing party who has been found to be in default.

- 1 5. [] An order of default is being requested with this proposed judgment.
2 6. [] Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise
3 noted.
4 7. [] This is a proposed judgment that includes an award of punitive damages and notice has been
5 served on the Director of the Crime Victims' Assistance Section as required by subsection
6 (4) of this rule.

7 Dated this 22nd day of August, 2017

8 By, s/Calvin Knickerbocker
9 Calvin Knickerbocker, OSB#050110
10 Attorney for Plaintiff
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26