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

BANK OF AMERICA, N.A.,

Plaintiff,

vs.

VENANCIO OLIVA, JENNIE E OLIVA;
UNITED STATES OF AMERICA;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV41307

~~Judge David E. Leith~~

WRIT OF EXECUTION IN
FORECLOSURE

TO THE MARION COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on April 13, 2017. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

BANK OF AMERICA, N.A.
c/o Brady Godbout
Attorney for Plaintiff

McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

With the adjudicated amount due of \$244,737.95, plus post judgment interest at the statutory rate of 9.0% per annum from 4/13/2017 to 5/30/2017 in the amount of \$3,439.95, and continuing with a per diem of \$60.35, currently totaling \$248,177.90.

1 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
2 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
3 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
4 about August 19, 2008, the date of the Deed of Trust, and also the interest that the Defendant had
5 thereafter, in the real property described in attached *Exhibit 1*, APN/Parcel # R55679, and
6 commonly known as 4758 Indiana Avenue NE, Salem, OR 97305.

7 Sale of the property is to satisfy the sum listed above, plus the costs incurred in
8 performing this Writ. Pursuant to ORS 18.872, you are authorized to continue execution under
9 the writ and delay making a return on the writ to no later than 150 days from receipt of the writ.
10 You are to make the return within 60 days after you receive this Writ. Should the sale be
11 continued, the writ may be automatically extended for 30 days.

Signed: 6/16/2017 04:09 PM



J. Tolman, Court Clerk



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17 Dated: June 6, 2017 and submitted by:

18 **McCarthy & Holthus, LLP**

19 s/ Brady Godbout

20 Brady Godbout OSB No. 132708

21 920 SW 3rd Ave, 1st Floor

22 Portland, OR 97204

23 Phone: (971) 201-3200

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25 bgodbout@mccarthyholthus.com

26 Of Attorneys for Plaintiff

Lot 3, Block 13, MIDDLE GROVE TRACTS, Marion County, Oregon

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

BANK OF AMERICA, N.A.,

Plaintiff,

v.

VENANCIO OLIVA; JENNIE E OLIVA;
UNITED STATES OF AMERICA;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 16CV41307

~~Judge David E. Cook~~

GENERAL JUDGMENT OF
FORECLOSURE

1.

THIS MATTER came before the Court on Plaintiff's motion.

a. Defendants VENANCIO OLIVA; JENNIE E OLIVA; UNITED STATES OF AMERICA; and OCCUPANTS OF THE PROPERTY ("Defaulted Defendants") were duly served with process and failed to appear; the default has been entered against Defaulted Defendants, and it appearing that Defaulted Defendants are not incapacitated, protected persons, respondents as defined in ORS 125.005, minors, or in the military service of the United States; now therefore,

2.

IT IS HEREBY ADJUDGED that Plaintiff shall have judgment as follows:

a. The real property to which this judgment relates is located and situated in Marion County, Oregon, and is commonly known as 4758 Indiana Avenue NE, Salem, OR 97305 (the

1 "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having
2 APN/Parcel No. R55679.

3 b. Plaintiff is entitled to enforce the note dated 8/19/2008 and made, delivered, and executed by
4 Venancio Oliva and Jennie Oliva to Evergreen Moneysource Mortgage Company, A
5 Washington Corporation in the amount of \$194,940.00 (the "Note"). The Note was
6 transferred to Plaintiff by delivery of possession and by indorsement set forth on the Note.

7 c. A deed of trust was made, executed, and delivered by Defendants Venancio Oliva and Jennie
8 E Oliva on or about 8/20/2008 (the "Deed of Trust"). The Deed of Trust was recorded on
9 8/22/2008 under Reel 2987 Page 155 in the official records of Marion County, Oregon. The
10 Deed of Trust is a valid and perfected lien against all of the Property for and securing the
11 Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim of the
12 Defendants and shall remain in effect until issuance of a Sheriff's Deed.

13 d. The Borrower failed to make the payment that was due for 1/1/2013 and has not cured the
14 default. The amount of debt secured by the Deed of Trust that is now due and owing is
15 comprised of the following amounts (the "Amount Due"):

- | | | |
|----|--|---------------------|
| 16 | a) Unpaid principal balance: | \$182,083.01 |
| 17 | b) Prejudgment interest accruing from | \$41,997.88 |
| 18 | 12/1/2012 through 4/10/2017 and | |
| 19 | continuing until the entry of judgment | |
| | at the current Note rate of 5.250%: | |
| 20 | c) Additional amounts due under the | \$18,106.01 |
| 21 | terms of the loan: | |
| 22 | d) Attorney fees and costs: | \$2,466.05 |
| 23 | e) Prevailing party fee (ORS 20.190 | \$85.00 |
| 24 | (1)(b)(A)): | |
| 25 | Total: | \$244,737.95 |

1 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from the
2 date of entry of this judgment through the sale of the Subject Property at the rate of 9.00%
3 per annum.

4 e. The interest of the Defendants and any successor in interest in the Subject Property is
5 foreclosed and terminated excepting only any statutory right of redemption as provided by
6 Oregon law.

7 f. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the
8 Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not have a
9 28 U.S.C. § 2410(c) one-year redemption right in this case.

10 g. The Defendants are not entitled to a homestead exception as against Plaintiff's judgment.

11 h. All right, title and interest in the Subject Property that Defendants Venancio Oliva and Jennie
12 E Oliva had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be
13 sold by the Marion County Sheriff's Office in accordance with the process for sale upon
14 execution, and the proceeds of sale shall be applied:

15 1) First, to the costs of sale not incurred by Plaintiff;

16 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
17 entry of judgment through the date of the sale and any incurred costs of sale;

18 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
19 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
20 such party or parties as they may establish their right thereto.

21 i. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
22 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
23 the date of entry of judgment through the date of the sale and any incurred costs of sale.

24 j. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
25 Property from and after the date of the sale and is entitled to such remedies as are available at
26 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
27

1 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
2 possession to the purchaser immediately upon the purchaser's demand for possession.

3 k. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
4 entitled to any further or other judgment, including a judgment for the deficiency.

5 l. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
6 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
7 terminated.

8 m. Pursuant to ORS 88.050, the apparent priority of liens subsequent and inferior to the Deed of
9 Trust are as follows:

10 1. As detailed herein, Defendant UNITED STATES OF AMERICA (the "Junior Interest
11 Holder") may claim some interest in Subject Property that is subsequent, subject, and
12 inferior to the interest held by Plaintiff. Plaintiff is seeking to foreclose upon a senior
13 lien and the Junior Interest Holder is named in this complaint solely by virtue of said
14 inferior interest in the Subject Property. Plaintiff is not seeking monetary damages,
15 attorney fees, costs or disbursements against said Junior Interest Holder that do/does not
16 contest this action. Specifically, the Junior Interest Holder may claim a junior interest in
17 Subject Property by virtue of:

18 a. A Deed of Trust recorded on 2/25/2013 as Instrument No. Reel 3476, Page 9 in
19 the official records of Marion County, Oregon; and,

20 b. A Deed of Trust recorded on 4/25/2013 as Instrument No. Reel 3496, Page 117
21 in the official records of Marion County, Oregon.

22
23
24 Signed: 4/13/2017 11:12 AM



25
26 **Circuit Court Judge David Leith**

27 I hereby certify that the requirements of UTCR 5.100 have been satisfied.

1 This proposed General Judgment of Foreclosure is ready for judicial signature because:

2 Each opposing party affected by this order or judgment has stipulated to the order or
3 judgment, as shown by each opposing party's signature on the document being
4 submitted.

5 Each opposing party affected by this order or judgment has approved the order or
6 judgment, as shown by signature on the document being submitted or by written
7 confirmation of approval sent to me.

8 I have served a copy of this order or judgment on all parties entitled to service and:

9 No objection has been served on me.

10 I received objections that I could not resolve with the opposing party despite
11 reasonable efforts to do so. I have filed a copy of the objections I received and
12 indicated which objections remain unresolved.

13 After conferring about objections, _____ agreed to independently file
14 any remaining objection.

15 The relief sought is against an opposing party who has been found in default.

16 An order of default is being requested with this proposed judgment.

17 Service is not required pursuant to subsection (3) of this rule, or by statute, rule, or
18 otherwise.

19 This is a proposed judgment that includes an award of punitive damages and notice
20 has been served on the Director of the Crime Victims' Assistance Section as required
21 by subsection (4) of this rule.

22 Other: _____

23 Presented by:

24 **McCarthy & Holthus, LLP**

25 s/ Bryan Kidder 4/10/17

26 Bryan Kidder, OSB No. 140459

27 920 SW 3rd Ave, 1st Floor

28 Portland, OR 97204

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