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LANE COUNTY S.O. CIVIL
12-05-17
RSD

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

BANK OF AMERICA, N.A. ,

Plaintiff,

vs.

PHYLLIS L. ORTON aka PHYLLIS
ORTON, an individual; and all other persons,
parties, or occupants unknown claiming any
legal or equitable right, title, estate, lien, or
interest in the real property described in the
complaint herein, adverse to Plaintiff's title,
or any cloud on Plaintiff's title to the
Property.

Defendants.

CASE NUMBER: 17CV00135

WRIT OF EXECUTION IN FORECLOSURE

TO: THE SHERIFF OF LANE COUNTY, OREGON:

1.

WHEREAS, on June 19, 2017, in the above-entitled Court, a General Judgment of
Foreclosure ("Judgment") was entered and docketed in the above-entitled and numbered proceeding

2.

NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON, you are hereby commanded to sell, in the manner prescribed by law for the sale of real property upon (subject to redemption, if applicable), all of the interest which the Defendants PHYLLIS L. ORTON AKA PHYLLIS ORTON and ALL OTHER PERSONS OR PARTIES UNKNOWN ("Defendants") had on November 21, 2009, the date of the foreclosed Deed of Trust which was recorded on December 14, 2009, as Instrument No. 2009-068580 in the official records of the Lane County Recorder's Office, and/or all of the interest which Defendants had thereafter, in the real property described in the Judgment to satisfy the Judgment as follows:

Lender's Principal Judgment:

Unpaid Principal Balance:	\$164,242.61
Pre-Judgment Interest from May 1, 2016 to May 26, 2017, the date set forth in the Judgment at 4.25%, per annum, (\$19.1241 per diem):	\$7,561.97
Lender's Fees and Costs:	\$2,360.38
Attorney's Fees and Costs:	\$3,113.00
<i>Total Judgment Entered:</i>	<i>\$177,277.96</i>

Additional Pre-Judgment Interest:

Accrued Interest from May 27, 2017, the day after the date set forth in the Judgment through June 19, 2017, the date of entry of the Judgment, at 4.25%, per annum (\$19.1241 per diem):	\$439.85
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1 *Total Judgment Entered Including*

2 *Additional Pre-Judgment*

3 *Interest:* *\$177,717.81*

4 3.

5 Additionally, Plaintiff is entitled to the accrual of post-judgment interest on *\$177,717.81* at
6 the legal rate of interest of 9% per annum, \$43.82 per diem, from June 20, 2017 to the date the real
7 property subject to the Judgment is sold by the County Sheriff at its foreclosure auction, plus costs of
8 this Writ, Sherriff's fees and sale costs, and all other recovered costs pursuant to law.

9 4.

10 The real property subject to this writ of execution is commonly known as 626 N 52ND ST,
11 SPRINGFIELD, OR 97478 ("Property") and described in Exhibit "1" attached hereto.

12 5.

13 The Judgment Creditor's name and address is:

14 BANK OF AMERICA, N.A.

15 100 N Tryon St.

16 Charlotte, North Carolina 28255-4000

17 The Judgment Creditor's name and address for the purpose of this Writ is:

18 BANK OF AMERICA, N.A.

19 c/o Malcolm & Cisneros, ALC (Attention: Nathan F. Smith)

20 2112 Business Center Drive

21 Irvine, CA 92612

22 949-252-9400

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THEREFORE, in the name of the State of Oregon, you are hereby commanded to seize and sell the Property, in the manner prescribed by law; or so much thereof as may be necessary to satisfy the Judgment, interest, fees, and costs.

MAKE RETURN HEREOF within 60 days after you receive this Writ.

June 29, 2017

By:
Court Clerk

Submitted by:

Dated: 6/28/17

Nathan P. Smith, OSB #120112
Attorney for Plaintiff
MALCOLM ♦ CISNEROS, A Law Corporation
2112 Business Center Drive, Second Floor
Irvine, California 92612
Phone: (949) 252-9400
Fax: (949) 252-1032
Email: nathan@mclaw.org



EXHIBIT 1

Lot 5, Block 8, FOURTH ADDITION TO NAYLOR SUBDIVISION, as platted and recorded in Book 67, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

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

BANK OF AMERICA, N.A. ,

Plaintiff,

vs.

PHYLLIS L. ORTON aka PHYLLIS
ORTON, an individual; and all other persons,
parties, or occupants unknown claiming any
legal or equitable right, title, estate, lien, or
interest in the real property described in the
complaint herein, adverse to Plaintiff's title,
or any cloud on Plaintiff's title to the
Property.

Defendants.

CASE NUMBER: 17CV00135

GENERAL JUDGMENT OF
FORECLOSURE AGAINST:

1. PHYLLIS L. ORTON AKA
PHYLLIS ORTON
2. ALL OTHER PERSONS OR
PARTIES UNKNOWN

1.

THIS MATTER, coming on regularly before the Court, and it appearing from the record herein that Plaintiff, BANK OF AMERICA, N.A. ("Plaintiff"), filed its Complaint for Foreclosure of Deed of Trust; that Defendants PHYLLIS L. ORTON AKA PHYLLIS ORTON AND ALL OTHER PERSONS OR PARTIES UNKNOWN ("Defendants") were duly served with the Summons and

1 Complaint as required by law; that Defendants failed to appear, that an order of default has been
2 entered against them on Plaintiff's Complaint, and that Plaintiff is entitled to entry of a General
3 Judgment foreclosing Plaintiff's deed of trust against the property commonly known as 626 N 52ND
4 ST, SPRINGFIELD, OR 97478 ("Property") and extinguishing any and all interest of the
5 Defendants in the Property.

6 2.

7 The Court being fully advised; it is hereby
8 ORDERED AND ADJUDGED that:

9 3.

10 Plaintiff is the holder of that certain note ("Note"), dated November 21, 2009, in the amount
11 of \$151,615.00, and executed by PHYLLIS L. ORTON.

12 4.

13 The Note is secured by that certain deed of trust ("Deed of Trust") dated November 21, 2009
14 and executed by PHYLLIS L. ORTON. The Deed of Trust was recorded on December 14, 2009
15 under the recording number 2009-068580 of the Official Records of Lane County, Oregon, against
16 the Property, which is legally described as: See Exhibit "1" attached hereto. ("Property") and
17 constitutes a valid lien against the Property.

18 5.

19 The terms of the Note and Deed of Trust are in breach, therefore, Plaintiff has now declared
20 all sums due and owing under the Note and Deed of Trust as immediately due and payable.

21 6.

22 The Deed of Trust is a valid first priority lien encumbering the Property, is superior to any
23 interest, lien, or claim of the Defendants and any other party in the Property, which are hereby
24 foreclosed and terminated, excepting only any statutory right of redemption to which the Defendants
25 may be entitled under Oregon law.

26 7.

27 A judgment of foreclosure in the amount of \$177,277.96 shall be granted in favor of Plaintiff,
28 and its successors and/or assigns, as further described below in the Declaration of Amount Owed –

1 Not a Money Award ("Amount Owed").

2 8.

3 The Property is hereby ordered to be sold by law and the proceeds of sale applied toward the
4 satisfaction of Plaintiff's Amount Owed herein; and the surplus, if any to the Clerk of the Court to be
5 disbursed to such party or parties as may establish their right thereto.

6 9.

7 Plaintiff is entitled to recover its reasonable attorney's fees and all reasonable and necessary
8 costs and expenses incurred to enforcing the Note and Deed of Trust.

9 10.

10 Any increased interest or any such additional amounts as Plaintiff may advance for taxes,
11 assessments, municipal charges, and such other items as may constitute liens on the Property,
12 together with insurance and repairs necessary to prevent the impairment of the Property, together
13 with interest thereon from the date of payment may also be added to the Amount Owed and paid
14 from the proceeds from the sale of the Property.

15 11.

16 Defendants and all parties claiming an interest in the Property as purchasers, encumbrancers,
17 or otherwise, are forever barred and foreclosed of all interests, liens, or claims in the Property and
18 every portion thereof, excepting only any statutory right of redemption provided by the laws of the
19 State of Oregon.

20 12.

21 Defendants PHYLLIS L. ORTON aka PHYLLIS ORTON is not entitled to a homestead
22 exemption in the Property.

23 13.

24 Plaintiff may become purchaser at the Sheriff's Sale of the Property and may bid up to the
25 aggregate amount of its Amount Owed, plus any additional interest and reasonable costs until sale.

26 14.

27 The purchaser of the Property at the Sheriff's Sale is entitled to exclusive and immediate
28 possession of the Property from and after the date of the sale, and is entitled to such remedies as are

1 available at law to secure possession of the Property, and may apply to the Clerk of the Court for a
2 writ of assistance, if Defendants, any of them, or any other party or person shall refuse to surrender
3 possession of the Property to the purchaser immediately on the purchaser's demand for possession.

4 15.

5 This Court shall retain jurisdiction to enforce all provisions of this General Judgment and to
6 enter such additional order, judgment, or decree necessary for the purchaser at the foreclosure sale to
7 obtain possession of the Property.

8 16.

9 Under the Note, there is now due and owing to Plaintiff, the following amounts, to be
10 hereinafter described as the Amount Owed.

11 17.

12 This suit does not constitute an attempt to collect the debt against Defendants PHYLLIS L.
13 ORTON aka PHYLLIS ORTON. Rather, it is a suit to execute upon the Property as security for the
14 Amount Owed.

15 **DECLARATION OF DEBT SECURED BY DEED OF TRUST**
16 **(Pursuant to Senate Bill 368)**

17 18.

18 Under the terms of the Deed of Trust and the Note dated November 21, 2009, in the original
19 principal amount of \$151,615.00, there is now due and owing the following amounts, to be
20 hereinafter described as the Amount Due:

21
22 **DECLARATION OF AMOUNT OWED – NOT A MONEY AWARD**

23 **1. Judgment Creditor:** BANK OF AMERICA, N.A.
24 Address: c/o MALCOLM ♦ CISNEROS,
25 A Law Corporation
26 2112 Business Center Drive, 2nd Floor
27 Irvine, California 92612
28

1 **Judgment Attorney:** Nathan F. Smith
2 Address: MALCOLM ♦ CISNEROS, A Law Corporation
3 2112 Business Center Drive, 2nd Floor
4 Irvine, California 92612
5 Telephone Number: (949) 252-9400

6 **2. Persons or Public Bodies Entitled to**
7 **a Portion the Judgment:** N/A

8 **3. Judgment Amount:** \$174,164.96

9 **4. Pre-Judgment Interest:** Simple interest to accrue on \$164,242.61 from
10 May 27, 2017 to the date the Judgment is
11 entered into the Court's register at 4.25% per
12 annum, \$19.1241 per diem.

13 **5. Post-Judgment Interest:** Simple interest to accrue on \$177,277.96 plus
14 Pre-Judgment Interest from the day after the
15 General Judgment is entered to the date upon
16 which the Writ of Execution in Foreclosure is
17 levied at the legal rate of interest or 9% per
18 annum, whichever is greater.

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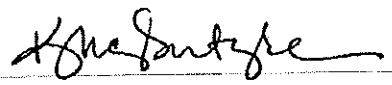
6. Periodic accrual:

N/A

7. Attorney's Fees and Costs:

An award of \$3,113.00 in attorney's fees and costs is made.

Signed: 6/15/2017 06:58 PM



Karrie K. McIntyre, Circuit Court Judge

Submitted by:



Dated:

6/14/17

Nathan F. Smith, OSB #120112
Attorney for Plaintiff
MALCOLM ♦ CISNEROS, A Law Corporation
2112 Business Center Drive, Second Floor
Irvine, California 92612
Phone: (949) 252-9400
Fax: (949) 252-1032
Email: nathan@mclaw.org

EXHIBIT 1

Lot 5, Block 8, FOURTH ADDITION TO NAYLOR SUBDIVISION, as platted and recorded in Book 67, Page 25, Lane County Oregon Plat Records, in Lane County, Oregon.

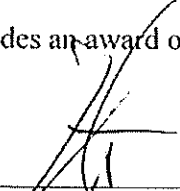
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CERTIFICATE OF READINESS

This proposed Order or Judgment is ready for judicial signature because:

- Service is not required pursuant to subsection (3) of UTCR 5.100, or by statute, rule or otherwise.
- The relief sought is against an opposing party who has been found in default.
- An order of default is being requested with this proposed judgment.
- Each opposing party affected by this order or judgment has stipulated to the order or judgment, as shown by each opposing party's signature on the document being submitted.
- Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.
- I have served a copy of this order or judgment on all parties entitled to service and:
 - No objection has been served on me.
 - 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.
 - After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.
- This is a proposed judgment that includes an award of punitive damages.

DATED: 6/14, 2017

By: 
 Nathan F. Smith, OSB #120112
 Attorney for Plaintiff
 MALCOLM ♦ CISNEROS, A Law Corporation
 2112 Business Center Drive, Second Floor
 Irvine, California 92612
 (949) 252-9400 (TELEPHONE)
 (949) 252-1032 (FAX)