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

WELLS FARGO BANK, NA,

Plaintiff,

vs.

THE UNKNOWN HEIRS AND DEVISEES
OF NEIL S. MCCARTNEY; UNKNOWN
SUCCESSOR TRUSTEE OF THE NEIL S.
MCCARTNEY REVOCABLE LIVING
TRUST OF 2013; KRISTI ROSSELL;
OCCUPANTS OF THE PROPERTY,

Defendants.

Case No.: 17CV21701

GENERAL JUDGMENT OF
FORECLOSURE

I.

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

a. Defendants THE UNKNOWN HEIRS AND DEVISEES OF NEIL S. MCCARTNEY;
UNKNOWN SUCCESSOR TRUSTEE OF THE NEIL S. MCCARTNEY REVOCABLE
LIVING TRUST OF 2013; KRISTI ROSSELL; OCCUPANTS OF THE PROPERTY
("Defendants") were duly served with process and failed to appear; the default has been
entered against Defendants, and it appearing that Defendants are not incapacitated, protected
persons, respondents as defined in ORS 125.005. minors, or in the military service of the
United States;

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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 Clatsop County, Oregon, and is commonly known as 82378 Vinemaple Road, Seaside, OR 97138 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. 3737.
- b. Plaintiff is entitled to enforce the note dated March 17, 2014 and made, delivered, and executed by Neil McCartney to Wells Fargo in the amount of \$143,000.00 (the "Note"). The Note was transferred to Plaintiff by delivery of possession and by indorsement set forth on the Note.
- c. A deed of trust was made, executed, and delivered by Defendant Neil S. McCartney on or about March 17, 2014 (the "Deed of Trust"). The Deed of Trust was recorded on March 18, 2014 as Instrument No. 201401526 in the official records of Clatsop County, Oregon. The Deed of Trust is a valid and perfected lien against all of the Property for and securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or claim of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.
- d. The Borrower failed to make the payment that was due for September 1, 2016 and has not cured the default. The amount of debt secured by the Deed of Trust that is now due and owing is comprised of the following amounts (the "Amount Due"):

- | | |
|--|--------------|
| a) Unpaid principal balance: | \$136,890.11 |
| b) Prejudgment interest accruing from 8/1/2016 through 11/27/2017 and continuing until the entry of judgment at the current Note rate of 4.125%: | \$7,460.63 |
| c) Additional amounts due under the terms of the loan: | \$4,140.25 |
| d) Attorney fees and costs | \$4,911.48 |
| e) Prevailing party fee (ORS 20.190 (1)(a)): | \$85.00 |

1 **Total:**

\$153,487.47

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

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

8 f. The Defendant is not entitled to a homestead exception as against Plaintiff's judgment.

9 g. All right, title and interest in the Subject Property that Defendant Neil S. McCartney had as
10 of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the
11 Clatsop County Sheriff's Office in accordance with the process for sale upon execution, and
12 the proceeds of sale shall be applied:

- 13 1) First, to the costs of sale not incurred by Plaintiff;
- 14 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
15 entry of judgment through the date of the sale and any incurred costs of sale;
- 16 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
17 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
18 such party or parties as they may establish their right thereto.

19 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
20 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
21 the date of entry of judgment through the date of the sale and any incurred costs of sale.

22 i. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
23 Property from and after the date of the sale and is entitled to such remedies as are available at
24 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
25 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
26 possession to the purchaser immediately upon the purchaser's demand for possession.
27

- 1 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
2 entitled to any further or other judgment, including a judgment for the deficiency.
- 3 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
4 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
5 terminated.

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10 Signed: 11/28/2017 04:52 PM

Cindee S. Matyas

11 **Circuit Court Judge Cindee S. Matyas**

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

13 This proposed Judgment Of Foreclosure is ready for judicial signature because:

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

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

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

21 No objection has been served on me.

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

25 After conferring about objections, _____ agreed to independently file
26 any remaining objection.

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

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

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

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

[] Other: _____

4 Dated: November 27, 2017 and submitted by:

5 **McCarthy & Holthus, LLP**

6 *s/ Jeremy Clifford*

7 Jeremy Clifford OSB No. 142987

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Of Attorneys for Plaintiff

EXHIBIT "1"

Lot 5, Block 1, VINEMAPLE ACRES, in the County of Clatsop, State of Oregon