

LANE COUNTY SO CIVIL
04.16.18 RJS/11

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

LIVE WELL FINANCIAL, INC.,

Case No.: 17CV11563

Plaintiff,

vs.

WRIT OF EXECUTION IN
FORECLOSURE

THE UNKNOWN HEIRS AND DEVISEES
OF HERBERT E. FLESHER; UNITED
STATES OF AMERICA; STATE OF
OREGON; CHRYSTAL FLESHER;
OCCUPANTS OF THE PROPERTY AT 903
N 55TH ST, SPRINGFIELD, OR 97478;
OCCUPANTS OF THE PROPERTY AT 905
N 55TH ST, SPRINGFIELD, OR 97478

Defendants.

TO THE LANE COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on September 28, 2017.

A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

LIVE WELL FINANCIAL, INC.
c/o Robert Hakari, Attorney for Plaintiff
McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

With the adjudicated amount due of \$192,311.65, plus post judgment interest at the statutory rate of 9.0% per annum from September 28, 2017 to 1/17/2018 in the amount of \$5,263.54, and continuing with a per diem of \$47.42, currently totaling \$197,575.19.

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 on

1 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
2 about September 25, 2007, the date of the Deed of Trust, and also the interest that the Defendant
3 had thereafter, in the real property described in the attached *Exhibit 1*, having APN/Parcel #:
4 0131548, and commonly known as: 903 N 55th St, 905 N 55th St, Springfield, OR 97478.

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

10
11 *January 18, 2018*

By: *Renee*
Court Clerk

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15 **McCarthy & Holthus, LLP**
16 s/ Robert B. Hakari 1/17/2018
17 _ John Thomas OSB No. 024691
18 x Robert Hakari OSB No. 114082
19 920 SW 3rd Ave, 1st Floor
20 Portland, OR 97204
21 Phone: (971) 201-3200
22 Fax: (971) 201-3202
23 rhakari@mccarthyholthus.com
24 Of Attorneys for Plaintiff
25
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EXHIBIT "1"

LOT 6, BLOCK 3, JACK'S PLAT, AS PLATTED AND RECORDED IN BOOK 19, PAGE 27, LANE COUNTY OREGON PLAT RECORDS, IN LANE COUNTY, OREGON.

ALSO THE EAST 5 FEET OF NORTH 55TH STREET, NOW VACATED, ADJOINING SAID LOT 6 ON THE WEST.

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

LIVE WELL FINANCIAL, INC.,

Plaintiff,

vs.

THE UNKNOWN HEIRS AND DEVISEES
OF HERBERT E. FLESHER; UNITED
STATES OF AMERICA; STATE OF
OREGON; CHRYSTAL FLESHER;
OCCUPANTS OF THE PROPERTY AT
903 N 55TH ST, SPRINGFIELD, OR 97478;
OCCUPANTS OF THE PROPERTY AT
905 N 55TH ST, SPRINGFIELD, OR 97478;

Defendants.

Case No.: 17CV11563

GENERAL JUDGMENT OF
FORECLOSURE

1.

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

a. All 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;

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 Lane County, Oregon, and is commonly known as 903 N 55th St & 905 N 55th St, Springfield, OR 97478 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. 0131548.

b. Plaintiff is entitled to enforce the note dated September 25, 2007 and made, delivered, and

1 executed by Herbert E. Flesher ("Borrower") to Countrywide Bank, FSB in the amount of
2 \$270,000.00 (the "Note"). The Note was transferred to Plaintiff by delivery of possession
3 and by indorsement set forth on the Note.

4 c. A deed of trust was made, executed, and delivered by Borrower on or about September 25,
5 2007 (the "Deed of Trust"). The Deed of Trust was recorded on October 2, 2007 as
6 Instrument No. 2007-068194 in the official records of Lane County, Oregon. The Deed of
7 Trust is a valid and perfected lien against all of the Property for and securing the Amount
8 Due. The lien of the Plaintiff is superior to any interest, lien, or claim of the Defendants and
9 shall remain in effect until issuance of a Sheriff's Deed.

10 d. Borrower passed away on September 17, 2015 and under the terms of the Loan, death of the
11 Borrower is cause for default. The amount of debt secured by the Deed of Trust that is now
12 due and owing is comprised of the following amounts (the "Amount Due"):

13	a) Unpaid principal balance:	\$153,226.57
14	b) Prejudgment interest	\$8,993.45
15	c) Additional amounts due under the	\$25,895.11
16	terms of the loan:	
17	d) Attorney fees and costs:	\$4,111.52
18	e) Prevailing party fee (ORS 20.190	\$85.00
	(1)(a)):	
19	Total:	\$192,311.65

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

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

26 f. Pursuant to 38 U.S.C. § 3720 (d), because the United States' lien is subordinate to the
27 Plaintiff's lien and is guaranteed/insured by the FHA, the federal government does not have a
28

1 28 U.S.C. § 2410(c) one-year redemption right in this case.

- 2 g. The Defendant are not entitled to a homestead exception as against Plaintiff's judgment.
- 3 h. All right, title and interest in the Subject Property that Borrower had as of the date of the
4 Deed of Trust or thereafter acquired is hereby ordered to be sold by the Lane County
5 Sheriff's Office in accordance with the process for sale upon execution, and the proceeds of
6 sale shall be applied:
- 7 1) First, to the costs of sale not incurred by Plaintiff;
 - 8 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
9 entry of judgment through the date of the sale and any incurred costs of sale;
 - 10 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
11 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
12 such party or parties as they may establish their right thereto.
- 13 i. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
14 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
15 the date of entry of judgment through the date of the sale and any incurred costs of sale.
- 16 j. The purchaser at the sale is entitled to exclusive and immediate possession of the Subject
17 Property from and after the date of the sale and is entitled to such remedies as are available at
18 law or in equity to secure possession. The purchaser at the sale may apply to the Court for a
19 writ of assistance if any Defendant, other party, or other person shall refuse to surrender
20 possession to the purchaser immediately upon the purchaser's demand for possession.
- 21 k. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
22 entitled to any further or other judgment, including a judgment for the deficiency.
- 23 l. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
24 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
25 terminated.
- 26 m. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the
27 Deed of Trust are as follows:

- 1 1) THE UNKNOWN HEIRS AND DEVISEES OF HERBERT E. FLESHER, may
2 claim a junior interest in the Property by virtue of intestate succession, devise or
3 operation of law.
- 4 2) UNITED STATES OF AMERICA, may claim an interest in the Subject Property
5 under the terms of an additional, subordinate note and deed of trust, associated with
6 this loan issued to the Secretary of Housing and Urban Development (the "HUD
7 Loan") in the amount of \$270,000.00. The deed of trust associated with the HUD
8 Loan is recorded in the official records of Lane County as Instrument No. 2007-
9 068195 on 10/02/2007.
- 10 3) STATE OF OREGON, has or may have a lien against the Property under the State of
11 Oregon tax deferral program.
- 12 4) CRYSTAL FLESHER, may claim a junior interest in the Property by virtue of
13 intestate succession, devise or operation of law
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Signed 9/26/2017 02:23 PM



R. Curtis Conover, Circuit Court Judge

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

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

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

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

27 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

1 reasonable efforts to do so. I have filed a copy of the objections I received and
2 indicated which objections remain unresolved.

[] After conferring about objections, _____ agreed to independently file
3 any remaining objection.

[x] 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.

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

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

[] Other: _____
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10 **McCarthy & Holthus, LLP**

11 s/ Robert B. Hakari 9/14/2017

12 Robert Hakari OSB No. 114082

13 920 SW 3rd Ave, 1st Floor

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14 Phone: (971) 201-3200

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Of Attorneys for Plaintiff
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