

Court clerk has not verified the figures in this writ. If you have questions regarding this writ, please contact your legal counsel, the issuing attorney, or company. Debtor may contest this writ by filing a claim of exception.

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

2018 MAY -4 PM 12:34

U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS INDENTURE TRUSTEE FOR CASTLE PEAK 2012-1 LOAN TRUST MORTGAGE BACKED NOTES, SERIES 2012-1, its successors in interest and/or assigns,

Case No. 14CV07376

WRIT OF EXECUTION OF REAL PROPERTY FORECLOSURE

Plaintiff,

v.

MARTIN BILYEU AKA ARCHIE MARTIN BILYEU; ASSET SYSTEMS INC.; et al

Defendants.

TO: THE SHERIFF OF MULTNOMAH COUNTY, OREGON:

WHEREAS on September 7, 2017, a general judgment of foreclosure in favor of plaintiff U.S. BANK NATIONAL ASSOCIATION, NOT IN ITS INDIVIDUAL CAPACITY BUT SOLELY AS INDENTURE TRUSTEE FOR CASTLE PEAK 2012-1 LOAN TRUST MORTGAGE BACKED NOTES, SERIES 2012-1, its successors in interest and/or assigns, ("U.S. Bank"), was entered and docketed in the above-entitled matter (the "Judgment"), a copy of which is attached hereto and made a part hereof;

Tony Kullen, OSB # 090218
Wright Finlay & Zak, LLP
121 SW Morrison, Suite 1875
Portland, OR 97204

WHEREAS, the Judgment remains unsatisfied in the following amounts as of

February 26, 2018:

1. Principal Amount: \$431,913.05
2. Pre-judgment interest in judgment: \$375,537.78
3. Additional pre-judgment interest from January 31, 2017, through September 7, 2017, the date of entry of judgment, at the contract rate of 9.2 percent per annum (\$107.24 per diem): \$23,484.47
4. Escrow advances and recoverable balance included in judgment: \$63,180.16
5. Post-judgment interest from September 7, 2017, through February 26, 2018, with interest accruing thereafter at the higher of the legal rate or the contract rate of 9.2 percent per annum (presently \$225.37 per diem) \$38,762.97
6. Total Amount Due (as of February 26, 2018): \$932,878.43

NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON, you are hereby commanded to levy on and sell, in the manner prescribed by law for the sale of real property on execution (subject to redemption) all the interest of defendants in the following real property (the "Property"):

LOTS 1 AND 2, BLOCK 3, MONTAVILLA, WITH STRIP 27.98 FEET WIDE BEING ONE-HALF OF VACATED STREET SOUTH OF, AND ADJOINING, WITHIN THE CORPORATE LIMITS OF THE CITY OF PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

and apply the proceeds of the sale in accordance with the law and levy on and sell the Property within 60 days after receiving this writ, making due return within 60 days after you receive this writ.

Tony Kullen, OSB # 090218
Wright Finlay & Zak, LLP
121 SW Morrison, Suite 1875
Portland, OR 97204

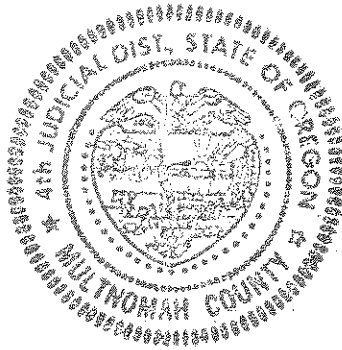
1 The street address for the Property is:

2 643 Southeast 74th Avenue, Portland, Oregon 97215.

3 The judgment creditor's mailing address is:

4 U.S. Bank National Association, not in its individual
5 capacity but solely as Indenture Trustee for Castle Peak
6 2012-1 Loan Trust Mortgage Backed Notes, Series 2012-1
7 c/o Wright Finlay & Zak, LLP
8 121 SW Morrison, Suite 1875
9 Portland, Oregon 97204

10
11 MULTNOMAH COUNTY COURT ADMINISTRATOR



3/9/18

20 By: _____

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ISSUED AT THE REQUEST OF:

21 Tony Kullen, OSB # 090218
22 Wright Finlay & Zak, LLP
23 121 SW Morrison, Suite 1875
24 Portland, OR 97204
25 Phone: (503) 479-8871
26 Fax: (949) 608-9142
27 Email: tkullen@wrightlegal.net

Attorneys for Plaintiff

Tony Kullen, OSB # 090218
Wright Finlay & Zak, LLP
121 SW Morrison, Suite 1875
Portland, OR 97204

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CERTIFICATE OF SERVICE

I the undersigned am over the age of 18 years and am not a party to this action. On February 26, 2018, I caused the attached WRIT OF EXECUTION OF REAL PROPERTY to be served by U.S. mail, as follows:

Martin Bilyeu aka Archie Martin Bilyeu
643 SE 74th Avenue
Portland, OR 97215

Asset Systems Inc.
c/o Michael G. Schindler, Registered Agent
4520 Southeast Belmont, Suite 280
Portland, OR 97215

Restore Financial Service Network, LLC
c/o James B. Reed, Registered Agent
18210 East Burnside, #B
Portland, OR 97233

Brian J. Beck
c/o Brooks Law Office LLC
5 Centerpointe Drive, Suite 400
Lake Oswego, OR 97035

Occupants of the Premises
643 SE 74th Avenue
Portland, OR 97215

Multnomah County
c/o Carlos Rasch
501 SE Hawthorne Boulevard, Suite 500
Portland, OR 97214

City of Portland
c/o Simon Whang, Deputy City Attorney
1221 Southwest 4th Avenue, Room 430
Portland, OR 97204

Oscar Alvarado
5714 SE Ogden Street
Portland, OR 97206

Oscar Alvarado
2803 SE 122nd Avenue
Portland, OR 97236

Teresa Mishler, as Personal Representative
Estate of Martin Bilyeu
P.O. Box 3076
Oregon City, OR 97045

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing is true and correct.

Dated February 26, 2018, at Seattle, WA

/s/Karina Krivenko
Karina Krivenko

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

U.S. BANK NATIONAL ASSOCIATION, NOT
IN ITS INDIVIDUAL CAPACITY BUT
SOLELY AS INDENTURE TRUSTEE FOR
CASTLE PEAK 2012-1 LOAN TRUST
MORTGAGE BACKED NOTES, SERIES
2012-1, its successors in interest and/or assigns,

Plaintiff,

v.

MARTIN BILYEU AKA ARCHIE MARTIN
BILYEU; ASSET SYSTEMS INC.; OSCAR
ALVARADO; MULTNOMAH COUNTY;
CITY OF PORTLAND; RESTORE
FINANCIAL SERVICE NETWORK, LLC;
AND OCCUPANTS OF THE PREMISES,

Defendants.

Case No. 14CV07376

GENERAL JUDGMENT AGAINST:

- (1) MARTIN BILYEU AKA ARCHIE MARTIN BILYEU**
- (2) ASSET SYSTEMS INC.**
- ~~**(3) OSCAR ALVARADO**~~ *w*
- (4) MULTNOMAH COUNTY**
- (5) RESTORE FINANCIAL SERVICE NETWORK, LLC**
- (6) OCCUPANTS OF THE PREMISES**

1.

THIS MATTER coming regularly before the Court on this day and it appearing from the record herein that plaintiff U.S. Bank National Association, not in its individual capacity but solely as Indenture Trustee for Castle Peak 2012-1 Loan Trust Mortgage Backed Notes, Series 2012-1, its successors in interest and/or assigns ("Plaintiff"), filed its First Amended Complaint for Declaratory Relief for Deed of Trust Foreclosure and Sale; and Unjust Enrichment, Equitable Lien, and Equitable

1 Subrogation; that defendants Martin Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc.; Oscar
2 Alvarado; Multnomah County; Restore Financial Service Network, LLC; and Occupants of the
3 Premises were duly served with the Summons and First Amended Complaint as required by law; that
4 defendants Asset Systems Inc.; ~~Oscar Alvarado~~^u; Multnomah County; Restore Financial Service
5 Network, LLC; and Occupants of the Premises failed to appear; and that an Order of Default has been
6 entered against them on Plaintiff's First Amended Complaint; that Plaintiff and Defendant City of
7 Portland stipulated to a limited judgment that has been filed for entry concurrently herewith and that is
8 subject to entry of this General Judgment; that Plaintiff prevailed on all its claims against defendant
9 Martin Bilyeu aka Archie Martin Bilyeu; that Plaintiff prevailed against defendant Martin Bilyeu aka
10 Archie Martin Bilyeu on all of said defendant's defenses, affirmative defenses, and counterclaims; and,
11 consequently this General Judgment is submitted in accordance with UTCR 5.100 (3)(c), and Defendant
12 Oscar Alvarado having been dismissed previously by Order entered pursuant to UTCR 7.020. ^u
13

14
15 Plaintiff hereby requests this General Judgment be entered into the Court's register to
16 accomplish the following: to foreclose any and all interest of defendants Martin Bilyeu aka Archie
17 Martin Bilyeu; Asset Systems Inc.; Oscar Alvarado; Multnomah County; Restore Financial Service
18 Network, LLC; and Occupants of the Premises in the real property subject to this foreclosure action,
19 located at 643 Southeast 74th Avenue, Portland, Oregon 97215 (the "Property").
20

21 3.

22 The court being fully advised in the Premise, finding good cause exists so this General
23 Judgment may be entered in favor of Plaintiff and against Martin Bilyeu aka Archie Martin Bilyeu;
24 Asset Systems Inc.; ~~Oscar Alvarado~~^u; Multnomah County; Restore Financial Service Network, LLC;
25 and Occupants of the Premises, all of them, it is hereby
26

1 ORDERED AND ADJUDGED:

2 (On First Count – Deed of Trust Foreclosure)

3 4.

4 That the Deed of Trust dated April 11, 2007, executed by Martin Bilyeu, a single man, for the
5 benefit of Mortgage Electronic Registration Systems, Inc. as nominee for BNC Mortgage, Inc. a
6 Delaware Corporation, its sucesors and assigns (“Deed of Trust”), recorded on May 1, 2007, as
7 Instrument No. 2007-077886 in the official records of Multnomah County, Oregon, and subsequently
8 assigned to Plaintiff by way of an assignment recorded on August 12, 2013, as Instrument No. 2013-
9 110749, is a valid lien for the amount due and owing as set forth in Paragraph 13 herein, against the
10 Property situated in Multnomah County, Oregon, and described as follows:
11

12 LOTS 1 AND 2, BLOCK 3, MONTAVILLA, WITH STRIP 27.98 FEET
13 WIDE BEING ONE-HALF OF VACATED STREET SOUTH OF, AND
14 ADJOINING, WITHIN THE CORPORATE LIMITS OF THE CITY OF
15 PORTLAND, COUNTY OF MULTNOMAH AND STATE OF OREGON.

15 5.

16 That the lien of the Deed of Trust is superior to any interest, lien, or claim of defendants Martin
17 Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc.; ~~Oscar Alvarez~~^W; Multnomah County; Restore
18 Financial Service Network, LLC; and Occupants of the Premises in the Property, and that said Deed of
19 Trust is hereby foreclosed by this Court on the Property.
20

21 6.

22 That the grantor of the Deed of Trust, defendant Martin Bilyeu, who also appears of record as
23 Archie Martin Bilyeu, previously filed for protection under Chapter 13 of the United States Bankruptcy
24 Code, Case No. 16-31772-pcm13, District of Oregon, and the bankruptcy case was dismissed on
25 August 26, 2016. This suit does not constitute an attempt to collect the debt in violation of any
26

1 Bankruptcy Discharge Order. Rather, this judgment is to be enforced by execution and sale of the
2 Property as security for the debt owed under the terms of the Deed of Trust, as contemplated by the
3 bankruptcy code, and pursuant to ORS 88.010 and 88.060.

4
5 7.

6 That defendants Martin Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc.; ~~Oscar Alvarado~~^W;
7 Multnomah County; Restore Financial Service Network, LLC; and Occupants of the Premises, each of
8 them, and all parties claiming by, through, or under them as purchasers, encumbrances, or otherwise,
9 are forever barred and foreclosed of all interests, liens, or claims in the Property, and every portion
10 thereof, excepting only the statutory right of redemption provided by the laws of the State of Oregon.

11 8.

12 That defendants Martin Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc.; ~~Oscar Alvarado~~^W;
13 Multnomah County; Restore Financial Service Network, LLC; and Occupants of the Premises, all of
14 them, are not entitled to a homestead exemption as against Plaintiff's Deed of Trust.

15
16 9.

17 That all of the right, title and interest which Martin Bilyeu, who also appears of record as Archie
18 Martin Bilyeu, had on April 11, 2007, the date of the Deed of Trust, and all of the right, title and interest
19 defendants Martin Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc.; ~~Oscar Alvarado~~^W; Multnomah
20 County; Restore Financial Service Network, LLC; and Occupants of the Premises and any successor
21 thereafter had in and to the real Property is hereby ordered to be sold by law, and the proceeds of sale
22 shall be applied first toward the sheriff's fees and costs of sale, then toward the satisfaction of the
23 amount due and owing set forth in Paragraph 13 herein; and the surplus, if any, to the Clerk of the Court
24 to be disbursed to such party or parties as may establish their right thereto.
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10.

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

11.

That the Plaintiff, if the successful purchaser of the Property at the sheriff's sale, reserves the right to motion the court after sale for exclusive and immediate possession of the Property through the issuance and enforcement of a writ of assistance, should defendants Martin Bilyeu aka Archie Martin Bilyeu; Asset Systems Inc. ~~Oscar Alvarez~~^W; Multnomah County; Restore Financial Service Network, LLC; and Occupants of the Premises refuse to surrender possession of the Property immediately upon the purchaser's demand for possession.

12.

That Plaintiff is entitled to, and is hereby awarded, its attorneys' fees and costs incurred in this action, and that Plaintiff's attorneys' fees in the reduced amount of \$19,096.00, and its litigation costs in the reduced amount of \$3,794.60, 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 April 11, 2007, in the principal amount of \$432,000.00, there is now due and owing the following amounts, to be hereinafter described as the Amount Due:

1 **Attorneys' Fees and Costs (as allowed under**
2 **Opinion and Order of Judge Litzenberger,**
3 **dated June 16, 2017)**

3 Attorneys' Fees \$19,096.00
4 Total Costs, including search fees, service fees,
5 witness fees, filing fees, copying charges for medical
6 requests, and other costs allowed in the court's order: \$3,794.60
7 ***Total Attorneys' Fees and Costs*** **\$22,890.60**

7 **Lenders' Principal and Interest**

8 Principal Balance \$431,913.05
9 Accrued Interest from June 1, 2007, to January 31,
10 2017, the date calculated by the declarant in the
11 declaration in support of default \$375,537.78
12 ***Total Principal & Interest*** **\$807,450.83**

11 **Lenders' Fees and Costs**

12 Escrow Advance \$62,305.66
13 Recoverable Balance \$874.50
14 ***Total Lenders' Fees and Costs:*** **\$63,180.16**
15 ***Total Lenders' Principal, Interest, Fees, and Costs:*** **\$870,630.99**

16 Additional pre-judgment interest pursuant to ORS
17 18.042 from January 31, 2017 to the date entry of
18 judgment at the contract rate of interest
19 Post-Judgment interest thereafter on the Total Amount
20 Due at the contract rate of interest, or 9.000% per
21 annum, whichever is greater.

20 ***Total Amount Due*** **\$893,521.59**

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(On Second Count – Unjust Enrichment)

14.

It is hereby ordered and adjudged that Martin Bilyeu would be unjustly enriched if he were allowed to retain the benefit of having his prior mortgage paid off and receiving a cash payment of \$11,890.33, from the proceeds of the subject Loan, while simultaneously allowing him to invalidate the Plaintiff's Note and/or Deed of Trust.

(On Third Count – Equitable Lien)

15.

It is hereby ordered and adjudged that Martin Bilyeu agreed and intended to grant a lien against his Property to secure repayment of the Loan, and that he executed the Deed of Trust for that purpose. Martin Bilyeu's agreement to grant a lien against the Property creates an equitable lien against the Property in favor of the Plaintiff.

(On Fourth Count – Equitable Subrogation)

16.

It is hereby ordered and adjudged that the Plaintiff is equitably subrogated to the rights, remedies, and lien priority of the prior mortgage holder, as the proceeds of the subject Loan were used to pay off Martin Bilyeu's prior mortgage.

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1 **ON DEFENDANT BILYEU'S COUNTERCLAIMS**

2 17.

3 Finally, in accordance with the court ruling and Order dated April 6, 2017, it is adjudged
4 Plaintiff is the prevailing party on Defendant Bilyeu's counterclaims and that judgment is hereby
5 entered in Plaintiff's favor on such Defendant's counterclaims.

6 ///


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11 Signed: 9/7/2017 04:17 PM



12 **Circuit Court Judge Marilyn E. Litzenberger**

13
14 Presented by:

15 **RCO LEGAL, P.S.**

16
17 By s/ Tony Kullen DATED: September 6, 2017

18 Tony Kullen, OSB # 090218
19 Attorneys for Plaintiff
20 511 SW 10th Ave., Ste. 400
21 Portland, OR 97205
T: (503) 977-7840 F: (503) 977-7963
tkullen@rcolegal.com

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 exits 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 certain opposing parties.
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 against all parties other than defendant Martin Bilyeu is against opposing
parties who have been found to be in default.

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

Dated this 6th day of September, 2017

By, s/ Tony Kullen
Tony Kullen, OSB#090218
Attorney for Plaintiff