

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

KEYBANK NATIONAL ASSOCIATION, its
successors in interest and/ or assigns,

Plaintiff,

vs.

PHILLIP A. TOOMBS; UNKNOWN HEIRS
OF COLLEEN M. TOOMBS; CINDY
LUCHT, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
COLLEEN M. TOOMBS; CINDY LUCHT,
INDIVIDUALLY; CHARLES A. TOOMBS;
LEO SCOTT TOOMBS; STATE OF
OREGON; OCCUPANTS OF THE
PREMISES,

Defendants.

Case No.: 17CV37679

WRIT OF EXECUTION IN
FORECLOSURE

TO THE MALHEUR COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on 2/12/2019. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

KEYBANK NATIONAL ASSOCIATION
c/o Jeremy Clifford
Attorney for Plaintiff

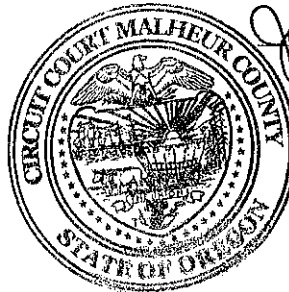
McCarthy & Holthus, LLP
920 SW 3rd Ave, 1st Floor
Portland, OR 97204

With the adjudicated amount due of \$86,886.10, plus pre-judgment interest at note of 4.240%, \$8.42 per diem from 2/1/2019 through 2/11/2019, in the amount of \$92.62, plus post judgment

1 interest at the statutory rate of 9.0%, per annum 2/12/2019 to 3/20/2019 in the amount of
2 \$772.09, and continuing with a per diem of \$21.45, currently totaling \$87,750.81.

3 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
4 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
5 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
6 about October 12, 2012, the date of the Deed of Trust, and also the interest that the Defendant
7 had thereafter, in the real property described as attached in Exhibit 1 and commonly known as:
8 1113 SW 14TH AVE, ONTARIO, OR 97914.

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



Jamie Young
3/18/2019

14
15
16
17
18 Dated: 3/18/2019, and submitted by:

19 **McCarthy & Holthus, LLP**

20 s/ Jeremy Clifford

21 John Thomas OSB No. 024691
22 x Jeremy Clifford OSB No. 142987
23 920 SW 3rd Ave, 1st Floor
24 Portland, OR 97204
25 Phone: (971) 201-3200
26 Fax: (971) 201-3202
27 jclifford@mccarthyholthus.com
28 Of Attorneys for Plaintiff

EXHIBIT "1"

Legal Description

Situated in the County of Malheur and State of Oregon: Lot 10, Division 3, College Green Estates, Oregon, Malheur County, Oregon, according to the Official Plat thereof.

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

KEYBANK NATIONAL ASSOCIATION,
its successors in interest and/or assigns,

Plaintiff.

vs.

PHILLIP A. TOOMBS; UNKNOWN
HEIRS OF COLLEEN M. TOOMBS;
CINDY LUCHT, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF
COLLEEN M. TOOMBS; CINDY LUCHT,
INDIVIDUALLY; CHARLES A.
TOOMBS; LEO SCOTT TOOMBS; STATE
OF OREGON; AND OCCUPANTS OF
THE PREMISES,

Defendants.

Case No.: 17CV37679

GENERAL JUDGMENT OF
FORECLOSURE

1.

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

- a. Defendants CINDY LUCHT, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF COLLEEN M. TOOMBS; CINDY LUCHT, INDIVIDUALLY; STATE OF OREGON; AND OCCUPANTS OF THE PREMISES ("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;
- b. UNKNOWN HEIRS OF COLLEEN M. TOOMBS; CHARLES A. TOOMBS; LEO SCOTT TOOMBS were dismissed from this action;
- c. An Order granting Summary Judgment has been entered with regard to Defendant PHILLIP A. TOOMBS, ("Toombs")(Collectively Defaulted Defendants and Toombs are known as

1 "Defendants") now therefore,

2 2.

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

- 4 a. The real property to which this judgment relates is located and situated in Malheur County,
5 Oregon, and is commonly known as 1113 SW 14TH AVE, ONTARIO, OR 97914 (the
6 "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having
7 APN/Parcel No. 2704.
- 8 b. Plaintiff is entitled to enforce the note dated October 12, 2012 and made, delivered, and
9 executed by PHILLIP A. TOOMBS and COLLEEN M. TOOMBS to KEYBANK
10 NATIONAL ASSOCIATION in the amount of \$83,125.00 (the "Note"). The Note was
11 transferred to Plaintiff by delivery of possession and by indorsement set forth on the Note.
- 12 c. A deed of trust was made, executed, and delivered by Borrowers PHILLIP A. TOOMBS and
13 COLLEEN M. TOOMBS on or about October 12, 2012 (the "Deed of Trust"). The Deed of
14 Trust was recorded on October 24, 2012 as Instrument No. 2012-3900 in the official records
15 of Malheur County, Oregon. The Deed of Trust is a valid and perfected lien against all of the
16 Property for and securing the Amount Due. The lien of the Plaintiff is superior to any
17 interest, lien, or claim of the Defendants and shall remain in effect until issuance of a
18 Sheriff's Deed.
- 19 d. The Borrower failed to make the payment that was due for September 1, 2016, and has not
20 cured the default. The amount of debt secured by the Deed of Trust that is now due and
21 owing is comprised of the following amounts (the "Amount Due"):

- 22 a) Unpaid principal balance: \$72,507.55
- 23 b) Prejudgment interest accruing from
24 8/1/2016 through 1/31/2019 and
25 continuing until the entry of
judgment at the current Note rate of
4.240%: \$7,686.49
- 26 c) Additional amounts due under the \$3,887.50
27 terms of the loan:

d) Attorney fees and costs:	\$2,719.56
e) Prevailing party fee (ORS 20.190 (1)(a)):	\$85.00
Total:	\$86,886.10

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

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

f. The Borrowers are not entitled to a homestead exception as against Plaintiff's judgment.

g. All right, title and interest in the Subject Property that Borrowers PHILLIP A. TOOMBS and COLLEEN M. TOOMBS had as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the Malheur County Sheriff's Office in accordance with the process for sale upon execution, and the proceeds of sale shall be applied:

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

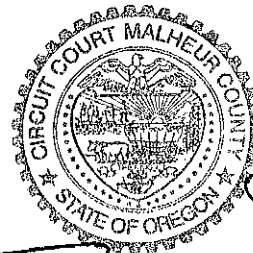
h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from the date of entry of judgment through the date of the sale and any incurred costs of sale.

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

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 j. 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 k. 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.



CERTIFIED TO BE A TRUE
COPY OF THE ORIGINAL.

Jamie Gandy
Court Clerk

Erin K. Landis

Erin K. Landis, Circuit Court Judge

Signed: 2/12/2019 04:02 PM

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

16 On 1/31/2019, a copy of the Motion For Entry Of Judgment, Declaration Of Attorney
17 Fees And Costs For Plaintiff, Declaration Of Amounts Due, Proposed Judgment Of Foreclosure
was:

18 Mailed to:

19 Phillip A. Toombs
20 813 Locust Ave
Nyssa, OR 97913

21 not less than 7 days prior to submission to the court with a notice of the time period to
22 object.

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

24 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
25 submitted.

26 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
27 confirmation of approval sent to me.

1 [x] I have served a copy of this order or judgment on all parties entitled to service and:

2 [x] No objection has been served on me.

3 [] 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.

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

5 [] The relief sought is against an opposing party who has been found in default.

6 [] An order of default is being requested with this proposed judgment.

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

9 [] 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
10 by subsection (4) of this rule.

11 [] Other: _____

12 Dated: February 12, 2019 and submitted by:

13 **McCarthy & Holthus, LLP**

14 s/ Jeremy Clifford

15 _____
Jeremy Clifford OSB No. 142987

16 920 SW 3rd Ave, 1st Floor

17 Portland, OR 97204

18 Phone: (971) 201-3200

19 Fax: (971) 201-3202

20 jclifford@mccarthyholthus.com

21 Of Attorneys for Plaintiff

EXHIBIT "1"

Legal Description

Situated in the County of Malheur and State of Oregon: Lot 10, Division 3, College Green Estates, Oregon, Malheur County, Oregon, according to the Official Plat thereof.