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

CALIBER HOME LOANS, INC.,
Plaintiff,
vs.
THE UNKNOWN HEIRS AND DEVISEES
OF CYNTHIA CHERRY; RANDEL S.
CHERRY; STATE OF OREGON;
OCCUPANTS OF THE PROPERTY,
Defendants.

Case No.: 22CV06376

WRIT OF EXECUTION IN
FORECLOSURE

TO THE KLAMATH COUNTY SHERIFF:

A Judgment of Foreclosure was entered and docketed in this case on August 26, 2022. A true copy of the Judgment is attached hereto. The Judgment was entered in favor of the Plaintiff:

Caliber Home Loans, Inc.
c/o Grace Chu
Attorney for Plaintiff

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

With the adjudicated amount due of \$158,609.95, plus pre judgment interest at the Note rate of 3.7500% from August 20, 2022 through August 26, 2022 in the amount of \$75.96, and post judgment interest at the statutory rate of 9.0% per annum from August 27, 2022 to October 5, 2022 in the amount of \$1,525.26, and continuing with a per diem of \$39.11, currently totaling \$160,211.17.

1 **NOW, THEREFORE, IN THE NAME OF THE STATE OF OREGON**, you are
2 hereby commanded to sell, in the manner prescribed by law for the sale of real property on
3 execution (subject to redemption of 180 days), all of the interest that the Defendant had on or
4 about September 11, 2017, the date of the Deed of Trust, and also the interest that the Defendant
5 had thereafter, in the real property described as follows:

6 LOT 377, BLOCK 122, MILLS ADDITION TO THE CITY OF KLAMATH
7 FALLS, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN
8 THE OFFICE OF THE COUNTY CLERK OF KLAMATH COUNTY,
9 OREGON.

10 and commonly known as: 2325 Garden Ave, Klamath Falls, OR 97601-3543.

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

16 **DATED:** 5th day of October, 2022.

17 Title John M. Powell, TCA
18 By [Signature]
19 

20 Dated: October 4, 2022 and submitted by:

21 McCarthy & Holthus, LLP

22 s/Grace Chu

23 _ Grace Chu OSB No. 220848

24 _ Michael Scott OSB No. 973947

25 920 SW 3rd Ave, 1st Floor

26 Portland, OR 97204

27 Phone: (971) 201-3200

28 Fax: (971) 201-3202

gchu@mccarthyholthus.com

Of Attorneys for Plaintiff

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

CALIBER HOME LOANS, INC.,
Plaintiff,
vs.
THE UNKNOWN HEIRS AND DEVISEES
OF CYNTHIA CHERRY; RANDEL S.
CHERRY; STATE OF OREGON;
OCCUPANTS OF THE PROPERTY,
Defendants.

Case No.: 22CV06376

GENERAL JUDGMENT OF
FORECLOSURE

1.

THIS MATTER came before the Court on Plaintiff's motion. Defendants THE UNKNOWN HEIRS AND DEVISEES OF CYNTHIA CHERRY; RANDEL S. CHERRY; STATE OF OREGON; and OCCUPANTS OF THE PROPERTY ("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;

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 Klamath County, Oregon, and is commonly known as 2325 Garden Ave, Klamath Falls, OR 97601-3543 (the "Subject Property"), legally described as shown in the attached *Exhibit 1*, and having APN/Parcel No. R481400.

1 b. Plaintiff is entitled to enforce the note dated September 11, 2017 and made, delivered, and
2 executed by CYNTHIA CHERRY to CALIBER HOME LOANS, INC. in the amount of
3 \$127,645.00 (the "Note"). The Note was transferred to Plaintiff by delivery of possession
4 and by indorsement set forth on the Note.

5 c. A deed of trust was made, executed, and delivered by Defendants CYNTHIA CHERRY on
6 or about September 11, 2017 (the "Deed of Trust"). The Deed of Trust was recorded on
7 September 12, 2017 as Instrument No. 2017-010290 in the official records of Klamath
8 County, Oregon. The Deed of Trust is a valid and perfected lien against all of the Property
9 for and securing the Amount Due. The lien of the Plaintiff is superior to any interest, lien, or
10 claim of the Defendants and shall remain in effect until issuance of a Sheriff's Deed.

11 d. The Borrower failed to make the payment that was due for June 1, 2019 and has not cured
12 the default. The amount of debt secured by the Deed of Trust that is now due and owing is
13 comprised of the following amounts (the "Amount Due"):

- | | | |
|----|---------------------------------------|----------------------|
| 14 | a) Unpaid principal balance: | \$123,254.12 |
| 15 | b) Prejudgment interest accruing from | \$15,246.10 |
| 16 | 5/1/2019 through 8/19/2022 and | |
| 17 | continuing until the entry of | |
| | judgment at the current Note rate of | |
| | 3.7500%: | |
| 18 | c) Additional amounts due under the | \$15,190.93 |
| 19 | terms of the loan: | |
| 20 | d) Attorney fees and costs: | \$4,833.80 |
| 21 | e) Prevailing party fee (ORS 20.190 | \$85.00 |
| | (1)(b)(A)): | |
| 22 | Total: | \$ 158,609.95 |

23 Pursuant to ORS 82.010 (2), post-judgment interest shall accrue on the Amount Due from the
24 date of entry of this judgment through the sale of the Subject Property at the rate of 9.00%
25 per annum.
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1 e. The interest of the Defendants and any successor in interest in the Subject Property is
2 foreclosed and terminated excepting only any statutory right of redemption as provided by
3 Oregon law.

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

5 g. All right, title and interest in the Subject Property that Defendants CYNTHIA CHERRY had
6 as of the date of the Deed of Trust or thereafter acquired is hereby ordered to be sold by the
7 Klamath County Sheriff's Office in accordance with the process for sale upon execution, and
8 the proceeds of sale shall be applied:

9 1) First, to the costs of sale not incurred by Plaintiff;

10 2) Second, to the Amount Due, plus post-judgment interest accruing from the date of
11 entry of judgment through the date of the sale and any incurred costs of sale;

12 3) Third, the surplus, if any, to the Defendants in the priority as their interest may
13 appear, described *infra*, or to the clerk of the court to be distributed by the Court to
14 such party or parties as they may establish their right thereto.

15 h. Plaintiff may become purchaser at the sale of the Subject Property and, pursuant to ORS
16 18.936 (2), may credit bid up to the Amount Due, plus post-judgment interest accruing from
17 the date of entry of judgment through the date of the sale and any incurred costs of sale.

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

23 j. In the event the proceeds of sale are insufficient to pay the Amount Due, Plaintiff shall not be
24 entitled to any further or other judgment, including a judgment for the deficiency.

25 k. If, before the sale, the Amount Due is brought into court and paid to the clerk, the execution,
26 if issued, shall be recalled and the effect of the judgment as to the Amount Due shall be
27 terminated.

1 1. Pursuant to ORS 18.950 (4), the apparent priority of liens subsequent and inferior to the
2 Deed of Trust are as follows:

3 Defendant RANDEL S. CHERRY may claim a junior interest in the Property as
4 Affiant by virtue of a Small Estate Affidavit filed May 19, 2020 under Klamath
5 County Circuit Court Case No. 20PB03446 for the estate of CYNTHIA CHERRY,
6 deceased.

8/25/2022 10:51:55 AM



Circuit Court Judge Dan Bunch

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

14 On _____, a copy of the Motion For Entry Of Judgment, Declaration Of
15 Attorney Fees And Costs For Plaintiff, Declaration Of Amounts Due, Proposed Judgment Of
Foreclosure was:

16 Served on:
not less than 3 days prior to submission to the court.

17 Accompanied by a stipulation by that no objection exists as to the judgment or order.

18 Mailed to:

19 RANDEL S. CHERRY
20 2325 GARDEN AVE
KLAMATH FALLS, OR 97601-3543

21 Occupants of the Property
22 2325 Garden Ave
Klamath Falls, OR 97601-3543

23 State of Oregon
24 1162 Court Street NE
Salem, OR 97301

25 The Unknown Heirs and Devisees of Cynthia Cherry
26 2325 Garden Ave
Klamath Falls, OR 97601-3543

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

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

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

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

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

11 No objection has been served on me.

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

15 After conferring about objections, _____ agreed to independently file
16 any remaining objection.

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

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

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

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

24 Other: _____

25 Dated: August 23, 2022 and submitted by:

26 **McCarthy & Holthus, LLP**

27 s/Grace Chu

28 _____
Grace Chu OSB No.
920 SW 3rd Ave, 1st Floor
Portland, OR 97204
Phone: (971) 201-3200
Fax: (971) 201-3202
gchu@mccarthyholthus.com
Of Attorneys for Plaintiff

Exhibit 1

LOT 377, BLOCK 122, MILLS ADDITION TO THE CITY OF KLAMATH FALLS,
ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE
COUNTY CLERK OF KLAMATH COUNTH OREGON.