

# ONEIDA JUDICIARY

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## TRIAL COURT

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**Oneida Nation,  
Comprehensive Housing Division  
Petitioner,**

v.

**CASE NO: 19-TC-001**

**Carla Holmes (f/k/a Carla Donaldson)  
and Joseph Donaldson,  
Respondents,**

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## JUDGMENT OF FORECLOSURE

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This case has come before the Oneida Trial Court, Honorable Layatalati Hill presiding.

Appearing in person: Petitioner, Oneida Nation Comprehensive Housing Division, by Attorney Krystal L. John and Rebecca Skenandore. Respondents, Carla Holmes (formally Donaldson) and Joseph Donaldson.

### STATEMENT OF CASE

The Petitioner is seeking to foreclose on the Respondents' property for defaulting on payments pursuant to the mortgage agreement.

### ISSUE

Is the Petitioner entitled to foreclose on the Respondents' property when the Respondents violated the mortgage agreement by failing to make mortgage payments?

### FINDING OF FACTS

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. The Respondents did not dispute any of the factual allegations in the Foreclosure Complaint.
4. The Petitioner provided a payoff analysis that included an updated delinquent mortgage payments due and an updated total loan balance owed, which are listed below.

5. The Respondents entered into a mortgage agreement with the Petitioner on October 29, 2004 to secure residential property located at 2900 Commissioner Street, Oneida, WI 54155.
6. The property is located on tribal trust land.
7. The Respondents defaulted on mortgage payments for 11 consecutive months for a total of past due payments, including late penalty fees, in the amount of \$5,410.28.
8. The Petitioner complied with all requirements of the Mortgage and Foreclosure Law, Oneida Code of Laws, Chapter 612 regarding foreclosure and notice.
9. The balance of the loan, including principle, interest and late fees owed to Petitioner by the Respondents is \$61,345.61.

### **PRINCIPLES OF LAW**

Title 6, Chapter 612 Mortgage and Foreclosure:

1. 612.7-1. *Decision to Foreclose.* Any mortgage that is in default for two (2) consecutive months may be subject to foreclosure, provided that the Nation has complied with the notice of default requirement in section 612.5-1.
2. 612.5-1. *Notice of Default.* The mortgage officer shall send a notice of default to mortgagors by first class mail for each month for which the mortgagor defaults on the subject mortgage, provided that the mortgage officer shall send the notices of default a minimum of thirty (30) calendar days apart and ensure that the notice contains the following information:
  - (a) The notice number;
  - (b) The dates of the default;
  - (c) The amount of the default;
  - (d) The requirement to cure the default, including important dates affecting the mortgagor's rights;
  - (e) The mortgagor's available options to cure a default; and
  - (f) The actions that may be taken by the Nation if the default is not timely cured.

### **ANALYSIS**

The Respondents did not dispute any of the allegations in the Foreclosure Complaint. The Mortgage and Foreclosure Law section 612.7-1 requires the Respondents to be in default for 2 consecutive months. The Respondents were in default from March 2018 through February 2019, making it 11 consecutive months in default. Therefore, section 612.7-1 is satisfied and the

Petitioner has the right to foreclosure, provided they have complied with the notice of default requirement in section 612.5-1.

The Mortgage and Foreclosure Law section 612.5-1 requires notices of default to be sent out at least 30 days apart and to contain specific information regarding the default. The Petitioner sent 3 notices of default letters to the Respondent. The letters are dated May 18, 2018, June 18, 2018 and July 18, 2018. The notice of default letters were sent at least 30 days apart. Therefore, the Petitioner satisfied the requirement that notice of default letters be sent out at least 30 days apart. When reviewing the letters, the letters clearly satisfy the requirements of 612.5-1 (a)-(f) and as a result the Petitioner satisfied all requirements under 612.5-1.

### **CONCLUSION OF LAW**

The Petitioner has satisfied the requirements of the Mortgage and Foreclosure Law and is entitled to foreclose on the Respondents' property.

### **ORDER**

The Court grants the relief sought by the Petitioner as follows:

1. Foreclosure of the premises located at 2900 Commissioner Street, Oneida, WI 54155 in accordance with the Mortgage and Foreclosure law, Chapter 612, subject to Respondents' claim of redemption, which transfers title of the mortgaged premises to the Petitioner as partial or full payment of the \$61,345.61 owed to the Petitioner.
2. The Respondents' redemption period shall be six (6) months from the date of this judgment. In order to redeem the property, the Respondents, their assigns and all persons claiming under Respondents, must satisfy the entire mortgage balance, interest, late fees, taxes, insurance premiums, utility bills, additional liens, administrative expenses and reasonable attorney fees for this suit through the Oneida Judiciary.
3. The Respondents shall vacate the premises within thirty (30) calendar days of the date of this judgment, at which specified date Petitioner shall be entitled to enter the premises to take possession and terminate the residential lease.
4. The Respondents and all persons claiming under Respondents are enjoined from committing waste or doing any act that may impair the value of the mortgaged premises from the date of this decision.
5. The Petitioner reserves the right to request a judgment of deficiency against the

Respondents for costs that may remain due after the transfer of title to the Petitioner pursuant to the Judgment of Foreclosure, where said judgment of deficiency may include sums advanced by the Petitioner for insurance, necessary repairs, inspections costs, appraisal fees and other costs.

6. Within seven (7) months of the Judgment of Foreclosure, the Petitioner shall submit either a motion demanding a judgment of deficiency or a motion to enforce the Judgment of Foreclosure, each of which are required to include a final accounting and confirmation of the appraisal of the premises.

IT IS SO ORDERED.

By the authority vested in the Oneida Trial Court pursuant to Resolution 01-07-13-B of the General Tribal Council an order signed on February 19, 2019.

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Layatalati Hill, Trial Court Judge