

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

ONEIDA NATION
Comprehensive Housing Division
Petitioner,

v.

CASE NO: 19-TC-009

Jennifer Stevens,
Respondent,

JUDGMENT OF FORECLOSURE

This case has come before the Oneida Trial Court, Honorable John E. Powless, III presiding.

Appearing in person: Attorney Patricia Garvey for the Petitioner: Oneida Nation Comprehensive Housing Division and Rebecca Skenandore and Respondent, Jennifer Stevens.

BACKGROUND

A foreclosure complaint was filed on July 10, 2019. A hearing was scheduled for August 13, 2019 at 9:00 a.m.

STATEMENT OF CASE

The Petitioner is seeking to foreclose on the Respondents' property for defaulting on payments pursuant to the Mortgage Agreement and Loan Agreement to Cure Default.

ISSUE

1. Is the Petitioner entitled to foreclose on the Respondents' property when the Respondent violated the Mortgage Agreement and Loan Agreement to Cure Default Agreement by failing to make Mortgage and Loan Agreement to Cure Default 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. Respondent entered into a Mortgage Agreement with the Petitioner on April 27, 2006 to

secure residential property located at 1967 Belmont Drive, Green Bay, Wisconsin 54304.

4. The property is located on fee land owned by the Petitioner.
5. Respondent entered into a residential lease with Petitioner which granted Petitioner leasehold interest in the land which the premises is situated upon.
6. Pursuant to the terms of the Consumer Universal Note, Respondent is required to pay Petitioner \$459.39 per month towards principal and interest, plus a \$3.00 late fee should the mortgage payment be made after the 10th of each month.
7. Respondent defaulted on mortgage payments for six consecutive months, September 2018 – February 2019.
8. On February 13, 2019, Respondent entered into Loan Agreement to Cure Default with Petitioner, requiring Petitioner to pay \$827.06 per month until February 2020.
9. Respondent defaulted on Loan Agreement to Cure Default payments for five consecutive months, March 2019 – July 2019.
10. As of August 13, 2019, the Respondent owed a total of \$6,874.32 in mortgage payments, including escrow balance owed, late fees pursuant to the Loan Agreement to Cure Default, the Mortgage Agreement, and the Consumer Universal Note.
11. The Petitioner complied with all requirements of the Mortgage and Foreclosure Law, Oneida Code of Laws, Chapter 612 with regard to default and foreclosure.
12. In regard to claim of redemption for Respondent, the total amount due to the Oneida Nation Comprehensive Housing Division to reclaim the property is \$60,008.03.
13. The total amount due is \$60,008.03.

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 Respondent did not submit a response disputing any of the allegations in the Foreclosure Complaint. The Mortgage and Foreclosure Law section 612.7-1 requires the Respondent to be in default for two consecutive months. The Respondent was in default of the Mortgage Agreement from September 2018 through February 2019, resulting in six consecutive months in default. The Respondent was further in default of the Loan Agreement to Cure Default from March 2019 through July 2019, five consecutive months. 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 letters certified mail to Respondent regarding the Respondents' Mortgage Agreement default on October 22, 2018, December 26, 2018, and February 5, 2019. The Petitioner further provided notice by certified mail to Respondent regarding Warning of Potential Mortgage Foreclosure on April 16, 2019. The notice of default letters were all 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 Respondent property at 1967 Belmont Drive, Green Bay, Wisconsin, 54304.

ORDER

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

1. Foreclosure of the premises located at 1967 Belmont Drive, Green Bay, WI 54304 in accordance with the Mortgage and Foreclosure law, Chapter 612, subject to claim of redemption for Respondent, which transfers title of the mortgaged premises to the Petitioner as partial or full payment of the \$60,008.03 owed to the Petitioner.
2. Respondent redemption period shall be six (6) months from the date of this judgment. In order to redeem the property, the Respondent, their assigns and all persons claiming under Respondent, 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. Respondent shall vacate the premises on or before Monday, September 30, 2019 by 3:30 p.m. CST, at such time the Petitioner shall be entitled to enter the premises to take possession and terminate the residential lease.
4. Respondent and all persons claiming under Respondent 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 Respondent 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 August 19, 2019 in the matter of Oneida Nation Comprehensive Housing Division v Jennifer Stevens. Case #19-TC-009.