

ONEIDA JUDICIARY
Tsi nu téshakotiya?tolétha?

TRIAL COURT

**Oneida Nation,
Comprehensive Housing Division
PETITIONER,**

v.

CASE NO: 20-TC-002

**Melanie Schuyler,
Estate of Gary Schuyler Jr.
RESPONDENTS**

ORDER

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

Appearing in person: Rebecca L. Skenandore, on behalf of Petitioner.

Appearing by phone: Attorney Kelly McAndrews, Representing the Petitioner.

Not appearing: Respondents, Melanie Schuyler and Estate of Gary Schuyler Jr.

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?

FINDINGS OF FACT

1. The Court has subject matter, personal and territorial jurisdiction over this matter.
2. Notice was given to all those entitled to notice.
3. A Hearing was held on August 11, 2020.
4. The Respondents failed to appear.
5. The Respondents are in default for failure to appear.
6. The Petitioner provided a payoff analysis that included an updated delinquent mortgage payment due and an updated total loan balance owed, which are listed below.
7. The Respondents entered into a mortgage agreement with the Petitioner on April 13, 2006 to secure residential property located at W386 Crook Rd., De Pere, WI 54115.
8. The property is located on Individual trust land.
9. Respondents have defaulted on mortgage payments for fourteen (14) consecutive months for

- a total of past due payments, including late penalty fees, in the amount of \$8,561.00.
10. The Petitioner complied with all requirements of the Mortgage and Foreclosure Law, Oneida Code of Laws, Chapter 612 regarding foreclosure and notice.
 11. The balance of the loan, including principle, interest and late fees owed to Petitioner by the Respondents is \$111,754.41.
 12. The property has been abandoned based on the following:
 - a. Terminated utility accounts for the premises.
 - b. Accumulation of trash or debris on the premises.
 - c. Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

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.
3. 612.7-4. (b) *Abandoned Premises.* The required redemption period for abandoned premises is, at a minimum, five (5) weeks. A redemption period based on abandoned premises requires an affirmative finding of abandonment by the Judiciary based on evidence submitted by the Comprehensive Housing Division on behalf of the Nation.
 - (1) In determining whether the mortgaged premises have been abandoned, the Judiciary shall consider the totality of the circumstances, including the following:
 - (A) Boarded, closed or damaged windows or doors to the premises;
 - (B) Missing, unhinged or continuously unlocked doors to the premises;
 - (C) Terminated utility accounts for the premises;
 - (D) Accumulation of trash or debris on the premises;
 - (E) At least two (2) reports to law enforcement officials of trespassing, vandalism, or other illegal acts being committed on the premises when the mortgagor is not present; and

(F) Conditions that make the premises unsafe or unsanitary or that make the premises in imminent danger of becoming unsafe or unsanitary.

ANALYSIS

The Mortgage and Foreclosure Law section 612.7-1 requires the Respondents to be in default for two (2) consecutive months. The Respondents were in default from July 2019 through August 2020, making it fourteen (14) 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 thirty (30) days apart and to contain specific information regarding the default. The Petitioner sent three (3) notices of default letters to the Respondent. The letters are dated August 19, 2019, September 19, 2019 and October 24, 2019. The notice of default letters were sent at least thirty (30) days apart. Therefore, the Petitioner satisfied the requirement that notice of default letters be sent out at least thirty (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.

The Mortgage and Foreclosure Law section 612.7-4 (b) requires a minimum of five (5) weeks to redeem if the premises are abandoned. The Court finds the premises is abandoned based on the totality of the circumstances, including, the termination of utilities, accumulation of trash or debris, abandoned vehicles, and conditions that make the premises unsafe or unsanitary, such as the basement flooding and no action taken to correct it. Because the premises have been abandoned, the Respondents must be given a minimum of five (5) weeks to redeem the premises.

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 W386 Crook Rd., De Pere, WI 54115 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 \$111,754.41 owed to the Petitioner.
2. The Respondents' redemption period shall be six (6) weeks 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 Respondents shall comply with all zoning requirements to remove property from the premises.
6. The Respondents shall cooperate with the Petitioners to keep the premises in Tribal trust.
7. 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.
8. 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 Judiciary pursuant to Resolution 01-07-13-B of the General Tribal Council an Order was signed on August 11, 2020.

Layatalati Hill, Trial Court Judge