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Vol. m96 Page 14836

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635 MAIN STREET
KLAMATH FALLS, OR 97601

FILED
STATE OF OREGON
96 MAY 18 11:37
CLERK OF COURT
Q

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF KLAMATH

TAMARACK PROPERTIES, INC.,)
an Oregon corporation,)

CASE NO. 9505249 CV

Plaintiff,)

ORDER GRANTING SUMMARY JUDGMENT

v.)

OMA MINOR,)

Defendant.)

THIS MATTER came before the Court on plaintiff's Motion for Partial Summary Judgment. The defendant did not file a reply to the Motion and the time provided in ORCP 47 for filing a reply has expired. The Court, having considered plaintiff's Motion and the Affidavits filed in support thereof, finds and determines as follows:

1. Plaintiff is entitled to an Order granting its summary judgment;
2. Tamarack Properties, Inc., is an Oregon corporation, duly authorized to transact business in the state of Oregon;
3. Tamarack Properties, Inc. is the owner of the real property described on Exhibit A attached hereto and incorporated herein by this reference;
4. Defendant is not entitled to compound the interest earned by the unpaid principal balance of the subject Promissory Note after January 1, 1987;

ORDER GRANTING SUMMARY JUDGMENT -1-

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1 5. The funds in the sum of \$40,200 used by defendant to purchase an existing Promissory
2 Note and Trust Deed do not constitute or provide consideration for a new Promissory Note and
3 Trust Deed. Therefore, the initial principal balance of the Promissory Note made by Leisure
4 Lodge, Inc., and which is the subject of this suit, is reduced by the sum of \$40,200;

6 6. The payment by defendant of real property taxes and interest levied against a lot owed
7 by defendant does not constitute consideration for a Promissory Note made by Leisure Lodge,
8 Inc. Therefore, the initial principal balance of the Promissory Note which is the subject of this
9 suit is reduced by the sum of \$833.57;

10 7. There is no evidence or proof that payments allegedly made by defendant to the
11 Klamath County Treasurer on December 5, 1990 in the sum of \$36,131.81 and on March 8, 1988
12 in the sum of \$3,378.29 were applied to pay taxes assessed against the land described in the Trust
13 Deed which is the subject of this suit. Therefore, defendant is not entitled to add said sums to the
14 amount owed by Leisure Lodge, Inc. to defendant and which is secured by the subject Trust
15 Deed;

16 8. Plaintiff made a valid and continuing tender to defendant of all sums owed on the
17 subject Promissory Note and secured by the subject Trust Deed on October 20, 1995. Therefore,
18 defendant is not entitled to any interest accruing after that date. Further, defendant is not entitled
19 to an award of costs, disbursements, or attorney's fees on defendant's counterclaim;

20 9. Plaintiff is entitled to pay the debt owed by Leisure Lodge, Inc. on the subject
21 Promissory Note to defendant and to become subrogated to the rights of defendant under the
22 Promissory Note and the Trust Deed which secure payment of the Promissory Note. The amount
23 owed on the Promissory Note is:
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ORDER GRANTING SUMMARY JUDGMENT -2-

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Face amount of Note dated October 23, 1986	\$45,233.15
Less: deduction provided in paragraph 4 above	(40,200.00)
Less: deduction provided in paragraph 5 above	(833.57)
True beginning balance of Note	\$ 4,199.58
Interest at 10% per annum from 10-23-86 to 1-1-87 (69 days)	79.39
Subtotal	\$ 4,278.97
Interest at 10% per annum from 1-1-87 to 10-20-95 (eight years and 200 days)	3,657.65
Total Owed	<u>\$ 7,936.62</u>

IT IS HEREBY ORDERED:

A. Plaintiff's Motion for Summary Judgment is granted;

B. Defendant Oma Minor is ordered to deposit with the Administrator of this Court, on or before May 31, 1996, the original of the Promissory Note dated October 23, 1986 in the face amount of \$45,233.15 and made by Leisure Lodge, Inc., a California corporation, in favor of L. D. Minor and Oma Minor, husband and wife, as joint tenants. Defendant Oma Minor is further ordered to deposit with the Administrator of this Court, on or before May 31, 1996, the Trust Deed made by Leisure Lodge, Inc. as Grantor, to Klamath County Title Company as Trustee, in favor of L. D. Minor and Oma Minor, husband and wife, as joint tenants, and recorded on November 13, 1986 in Volume M 86 at page 20534 of the records of the Clerk of Klamath County, Oregon;

C. At such time as defendant Oma Minor has deposited said original Promissory Note and original Trust Deed with the Administrator of the Court, then the Administrator is directed to distribute to Oma Minor, in care of Robert Bluth, attorney at law, 2592 East Barnett Road, Medford, Oregon 97504, the sum of \$7,936.62;

ORDER GRANTING SUMMARY JUDGMENT -3-

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1 D. Upon receipt of said Promissory Note and Trust Deed, the Administrator of the Court
2 is directed to distribute to plaintiff, Tamarack Properties, Inc., in care of its attorney, William M.
3 Ganong, 635 Main Street, Klamath Falls, Oregon 97601, said original Promissory Note and Trust
4 Deed;

5
6 E. Plaintiff is subrogated to all of the rights of Oma Minor in and to the said Promissory
7 Note and Trust Deed, and plaintiff is hereby declared to be the owner of the Promissory Note
8 described in Section A. above, and the owner of all of the beneficial interest in the Trust Deed
9 described in Section B. above, with all rights, title, and interests of the beneficiary thereof;

10
11 F. Plaintiff is declared to be the prevailing party in this suit and may apply for the entry of
12 Final Judgment;

13 G. Either party may apply for such further order or determination of the Court as may be
14 necessary to enforce or carry out the determination and finding contained in this Order.

15 Dated this 16 day of May, 1996.


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19 Rodger J. Isaacson
20 Circuit Court Judge
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EXHIBIT "A"

Lots 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 26 & 34, Block 1, Tract 1074, LEISURE WOODS, in the County of Klamath, State of Oregon.

Lots 4, 5, 6, and 7, Block 2, Tract 1074, LEISURE WOODS, in the County of Klamath, State of Oregon.

Lots 8, 11, 12 and 16, Block 3, Tract 1074, LEISURE WOODS, in the County of Klamath, State of Oregon.

Lots 1, 3, 4, 6, 7 and 8, Block 4, Tract 1074, LEISURE WOODS, in the County of Klamath, State of Oregon.

Lots 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24, Block 2, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

Lots 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35, Block 3, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

Lots 9, 10, 11, 12, 13, 14 and 15, Block 4, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19, Block 5, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

Lots 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, 29, 30 and 31, Block 6, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of Aspen Title & Escrow the 11th day
of April A.D. 19 95 at 10:52 o'clock A M., and duly recorded in Vol. 495
of Deeds on Page 8991

FEE \$15.00

B. Bertha G. Gotsch County Clerk

PARCEL 1:

Lots 36 thru 48, Block 3; Lots 16 thru 20, Block 4 and Lots 20 thru 38, Block 5, LEISURE WOODS UNIT #2, in the County of Klamath, State of Oregon.

PARCEL 2:

That portion of the SE 1/4 NW 1/4 of Section 7, Township 24 South, Range 7 East of the Willamette Meridian, in the County of Klamath, State of Oregon, lying Southerly and Westerly of LEISURE WOODS and Westerly and Northerly of Diamond Peak Circle Road and Easterly of Highway 58.

PARCEL 3:

The North 230 feet of the NE 1/4 SW 1/4 of Section 7, Township 24 South, Range 7 East of the Willamette Meridian, in the County of Klamath, State of Oregon, lying West of the Westerly right of way line of State Highway No. 58.

ALSO a portion of the NE 1/4 SW 1/4 of Section 7, Township 24 South, Range 7 East of the Willamette Meridian, in the County of Klamath, State of Oregon, described as follows:

Beginning at a 2 inch pipe with Brass cap marking the intersection of the North line of the NE 1/4 SW 1/4 of said Section 7 with the Easterly right of way line of Highway No. 58; thence North 89 degrees 49' 08" East along said North line a distance of 70.0 feet; thence South 16 degrees 21' 06" East parallel with the Easterly line of Highway No. 58, a distance of 104.2 feet; thence South 89 degrees 49' 08" West a distance of 70.0 feet to the Easterly right of way line of said Highway No. 58; thence North 16 degrees 21' 06" West along said right of way line a distance of 104.2 feet to the point of beginning..

CERTIFICATE OF MAILING

I certify that I served the foregoing ORDER GRANTING SUMMARY JUDGMENT by depositing a true, full, and exact copy thereof in the United States Post Office at Klamath Falls, Oregon, on May 16, 1996, enclosed in a sealed envelope, with postage paid, addressed to:

Robert Bluth
Attorney at Law
2592 East Barnett Road
Medford OR 97504

Dated this 16th day of May, 1996.

William M. Ganong
William M. Ganong

County of KLAMATH)
STATE OF OREGON)
I hereby CERTIFY that the within is a true and correct copy and the whole of the original.
Clerk of Court
By [Signature]
Date 20 May 96



WILLIAM M. GANONG
ATTORNEY AT LAW
635 MAIN STREET
KLAMATH FALLS, OREGON 97601
(541) 884-1721 / FAX (541) 883-1923
SS.

STATE OF OREGON: COUNTY OF KLAMATH:

Filed for record at request of William M Ganong the 22nd day of May A.D., 19 96 at 10:01 o'clock AM, and duly recorded in Vol. M96 of Mortgages/ Deeds on Page 14836.

FEE \$40.00

By Bernetha G. Letsch, County Clerk