

STATE OF MINNESOTA
COUNTY OF WASHINGTON

DISTRICT COURT
TENTH JUDICIAL DISTRICT

Timberland Exteriors, Inc., a
Minnesota Corporation,

Plaintiff,

Case Type: Foreclosure

Court File No: 82-CV-21-774

v.

Terrence S. Montanari and
Gina M. Montanari,

Marketplace Home Mortgage, LLC, a
Minnesota Limited Liability Company,

Affinity Plus Federal Credit Union, a
Federal Credit Union,

Builder Services Group, Inc., d/b/a
Penguin Insulation, a Florida Corporation,

Hugo Painting & Drywall Inc., a
Minnesota Corporation,

Defendants.

**ORDER GRANTING JUDGMENT ON THE PLEADINGS, FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT AND JUDGMENT**

The above matter came before the Court on Plaintiff's Motion for Judgment on the Pleadings on July 23, 2021, via Zoom. Present was Plaintiff, represented by Brent Tunis, Lommen Abdo. Defendants did not appear. The Court being fully advised, and based upon the files, records, and proceedings herein makes the following findings:

STATE OF MINNESOTA COUNTY OF WASHINGTON
Certified to be a true and correct copy of the
Record on file in my office.
Court Administrator
Washington County District Court
By: Ren Montanari 8/13/2021 Deputy

1. FINDINGS OF FACT

1. This is an action for foreclosure of a mechanic's lien pursuant to Minnesota Statutes Chapter 581 and 514 of a Mechanic's Lien in favor of Timberland Exteriors, Inc. ("Timberland"), as lienholder, said Mechanic's lien Statement being duly recorded on July 31, 2020 with the Washington County Recorder as Document No. 4256113 (the "Mechanic's Lien") encumbering certain real property commonly known as 641 Gosiwin Avenue, Mahtomedi, Minnesota and legally described as follows:

"Marshall's Add Lot 7 Block 1, Washington County, Minnesota"

(the "Property").

2. That said Mechanic's Lien stems from work performed by Timberland on and relating to the Property pursuant to a written agreement (the "Agreement") executed by Defendants Terrence S. Montanari and Gina M. Montanari ("Defendants") dated February 24, 2020 in the principal amount of \$51,831.00, of which \$31,831.00 remains due and owing (the "Note").

3. The Agreement described herein contains a provision providing for interest on unpaid balances of 5% per annum and that Defendants shall pay all collections costs, including attorney's fees upon default.

4. That Defendants have failed to make payment pursuant to the terms of the Agreement along with other non-monetary defaults, all according to the terms and conditions contained therein.

5. No other action or proceeding at law or equity has been commenced for the collection of the debt secured by the Mechanic's Lien or any part thereof or arising out of the Agreement.

6. Service of the Summons and Complaint in this matter has been duly made upon all of the Defendants.

7. Service of the Motion for Judgment on the Pleadings has been duly made upon all of the Defendants.

8. That Defendants have not opposed Plaintiff's Motion for Judgment on the Pleadings, have not otherwise raised any factual issues or disputed the debt, and did not appear at the hearing scheduled to hear said Motion.

9. The outstanding principal amount due on the Mortgage is \$31,831.00, plus interest through July 23, 2021 in the amount of \$2,245.61.

10. The reasonable value of the services of the attorneys for the Plaintiff in this action to date hereof is in the amount of \$11,651.50.

11. Plaintiff's costs and disbursements to date with regard to the above-captioned matter are in the amount of \$1,592.49.

Based upon the foregoing, the Court makes the following:

2. CONCLUSIONS OF LAW

1. Defendants have failed to deny any of the allegations of the Complaint and have not opposed Plaintiff's Motion for Judgment on the Pleadings or appeared at the hearing on the same.

2. Minn. R. Civ. P. 12.03 provides that "after the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings."

3. The pleadings have not raised any issue of fact remaining to be tried.

4. Plaintiff, Timberland Exteriors, Inc., as a matter of law, is entitled to judgment based on the pleadings as against Defendants Terrence S. Montanari and Gina M. Montanari.

5. Defendants Terrence S. Montanari and Gina M. Montanari are in default under the Agreement described herein and Timberland Exteriors, Inc. is entitled to judgment in its favor.

6. The interests of lienholders and Defendants Builder Services Group, Inc., d/b/a Penguin Insulation and Hugo Painting & Drywall Inc., were not timely foreclosed within one year of the date of last work or furnishing the last item of such skill, material, or machinery and as such the interests of said lienholders is extinguished and Plaintiff's interest is superior and prior to said interests.

7. The interests of lienholders and Defendants Marketplace Home Mortgage, LLC and Affinity Plus Federal Credit Union are prior to and superior to Plaintiff's interest.

8. Plaintiff's interest is superior and prior to all other unrecorded liens and interests.

ORDER

1. Timberland Exteriors, Inc. ("Timberland") shall have judgment against Defendants Terrence S. Montanari and Gina M. Montanari in the principal amount of \$31,831.00, plus interest at the contractual rate of 5% through July 23, 2021 in the amount of \$2,245.61, plus attorney fees in the amount of \$11,651.50 and costs in the amount of \$1,592.49 for a total judgment of **\$47,320.60** pursuant to the Agreement.

2. Said judgment is declared to be a lien on the property legally described as:

“Marshall's Add Lot 7 Block 1, Washington County, Minnesota”

prior and superior to any claim or interest of Defendants Terrence S. Montanari and Gina M. Montanari, prior to superior to any unrecorded lien or interest in said property, and prior to the interests of Defendants Builder Services Group, Inc., d/b/a Penguin Insulation and Hugo Painting & Drywall Inc., but is inferior and subject to the interests of lienholders and Defendants Marketplace Home Mortgage, LLC and Affinity Plus Federal Credit Union. Said property shall be

sold by the Sheriff of Washington County in the manner provided by law, to satisfy the amount adjudged due.

3. The Clerk of Court shall enter judgment against Defendants Terrence S. Montanari and Gina M. Montanari for any deficiency existing after the sale of the Property.

4. Timberland Exteriors, Inc. shall have judgment barring and foreclosing the interests of Defendants Terrence S. Montanari and Gina M. Montanari, Defendants Builder Services Group, Inc., d/b/a Penguin Insulation and Hugo Painting & Drywall Inc., and all other persons claiming through them, any and all interest, lien, or equity of redemption in said property, except the right of redemption as provided in Minnesota Statutes, Section 581.10 or by law, and except for the interests of lienholders and Defendants Marketplace Home Mortgage, LLC and Affinity Plus Federal Credit Union.

5. Plaintiff Timberland Exteriors, Inc., or its representatives, shall have the right of access to the property for the purpose of conducting an appraisal or otherwise determining its value.

6. The interests of lienholders Defendants Builder Services Group, Inc., d/b/a Penguin Insulation and Hugo Painting & Drywall Inc. are extinguished.

LET THE JUDGMENT BE ENTERED FORTHWITH.

Dated this ____ day of _____, 2021.

Filed in District Court
State of Minnesota

Aug 3 2021 8:55 AM

BY THE COURT:

07/28/2021 12:18:10 PM

Judge Gregory G. Galler

Judge of the District Court

I hereby certify that the
foregoing order constitutes
the Judgment of the Court

Aug 3 2021 8:55 AM

B.L.H.

NOTICE OF FORECLOSURE SALE/NOTICE OF SALE UNDER JUDGMENT AND DECREE/NOTICE OF VOLUNTARY MORTGAGE FORECLOSURE SALE

STATE OF MINNESOTA, COUNTY OF WASHINGTON

COURT FILE NO. 82-CV-21-774

TIMBERLAND EXTERIORS, INC., A MINNESOTA CORPORATION, PLAINTIFF VS. TERRENCE S. MONTANARI AND GINA M. MONTANARI, MARKETPLACE HOME MORTGAGE, LLC, A MINNESOTA LIMITED LIABILITY COMPANY, AFFINITY PLUS FEDERAL CREDIT UNION, A FEDERAL CREDIT UNION, BUILDER SERVICES GROUP, INC., D/B/A PENGUIN INSULATION, A FLORIDA CORPORATION, HUGO PAINTING & DRYWALL INC., A MINNESOTA CORPORATION, DEFENDANTS.

THE RIGHT TO VERIFICATION OF THE DEBT AND IDENTITY OF THE ORIGINAL CREDITOR WITHIN THE TIME PROVIDED BY LAW IS NOT AFFECTED BY THIS ACTION.

NOTICE IS HEREBY GIVEN:

That under and by virtue of a Judgment and Decree entered in the above-cited action on August 3, 2021, a certified copy of which has been delivered to me directing the sale of the premises hereinafter described to satisfy the amount found and adjudged due to said Plaintiff in the above-cited action from said Defendant Terrence S. Montanari and Gina M. Montanari, the Sheriff of Washington County will sell at public auction to the highest bidder for cash, the premises described in said Judgment and Decree to pay the debt secured by the following described **MECHANIC'S LIEN**:

DATE OF LIEN: July 23, 2020,

DATE AND PLACE OF RECORDING: July 31, 2020 as Document No. 4256113 in the office of the County Recorder of Washington County, Minnesota.

ORIGINAL PRINCIPAL AMOUNT SECURED BY THE LIEN: \$31,831.00

CREDITOR(S): Timberland Exteriors, Inc., a Minnesota Corporation

DEBTOR(S): Terrence S. Montanari and Gina M. Montanari, Husband and Wife.

TAX PARCEL IDENTIFICATION NUMBER: 29.030.21.12.0051

LEGAL DESCRIPTION OF PROPERTY: Marshall's Add Lot 7 Block 1, Washington County, Minnesota

ADDRESS OF PROPERTY: 641 Gosiwin Avenue, Mahtomedi, Minnesota

COUNTY IN WHICH PROPERTY IS LOCATED: Washington

AMOUNT DUE UNDER JUDGMENT & DECREE: \$47,320.60

THAT all pre-foreclosure requirements have been complied with; that no action or proceeding has been instituted at law or otherwise to recover the debt secured by said lien, or any part thereof.

PURSUANT to the power of sale contained in the said judgment and decree, the above-described property will be sold by the Sheriff of said county as follows:

DATE AND TIME OF SALE: Monday, October 18, 2021 at 10:00 a.m.

PLACE OF SALE: The lobby of the Washington County Sheriff's Office located at: 15015 62nd Street North, Stillwater, MN, County of Washington, to pay the debt then secured by said lien, and taxes, if any, on said premises, and the costs and disbursements, including attorneys' fees allowed by law subject to redemption within six (6) months from the date of said sale by the debtors, their personal representatives or assigns.

TIME AND DATE TO VACATE PROPERTY: Unless the property is redeemed, or unless the time for redemption is reduced by judicial order, you must vacate the premises by 11:59 p.m. on Monday, April 18, 2022.

THE TIME ALLOWED BY LAW FOR REDEMPTION BY THE MORTGAGOR, THE MORTGAGOR'S PERSONAL REPRESENTATIVES OR ASSIGNS, MAY BE REDUCED TO FIVE WEEKS IF A JUDICIAL ORDER IS ENTERED UNDER MINNESOTA STATUTES, SECTION 582.032, DETERMINING, AMONG OTHER THINGS, THAT THE MORTGAGED PREMISES ARE IMPROVED WITH A RESIDENTIAL DWELLING OF LESS THAN FIVE UNITS, ARE NOT PROPERTY USED IN AGRICULTURAL PRODUCTION, AND ARE ABANDONED.

HOMESTEAD DESIGNATION NOTICE

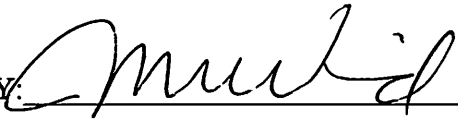
IF PART OF THE PROPERTY TO BE SOLD CONTAINS YOUR HOUSE, YOU MAY DESIGNATE AN AREA AS A HOMESTEAD TO BE SOLD AND REDEEMED SEPARATELY.

YOU MAY DESIGNATE THE HOUSE YOU OCCUPY AND ANY AMOUNT OF THE PROPERTY AS A HOMESTEAD. THE DESIGNATED HOMESTEAD PROPERTY MUST CONFORM TO THE LOCAL ZONING ORDINANCES AND BE COMPACT SO THAT IT DOES NOT UNREASONABLY REDUCE THE VALUE OF THE REMAINING PROPERTY.

YOU MUST PROVIDE THE PERSON FORECLOSING ON THE PROPERTY, THE SHERIFF, AND THE COUNTY RECORDER WITH A COPY OF THE LEGAL DESCRIPTION OF THE HOMESTEAD YOU HAVE DESIGNATED BY TEN BUSINESS DAYS BEFORE THE DATE THE PROPERTY IS TO BE SOLD.

Dated: 8.31.21


Washington County Sheriff

BY: 

Dated: August 24, 2021

LOMMEN ABDO, P.A.

BY: /s/ Brenton M. Tunis
Brenton M. Tunis
(MN: 399128 and WI: 1119888)
Grandview Professional Building
400 South Second Street, Suite 210
Hudson, Wisconsin 54016
Telephone: (715) 381-7113
Fax: (612) 436-2286
Email: btunis@lommen.com

PURSUANT TO THE FAIR DEBT COLLECTION PRACTICES ACT, YOU ARE ADVISED THAT THIS OFFICE IS DEEMED TO BE A DEBT COLLECTOR. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

THIS NOTICE IS REQUIRED BY THE PROVISIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT AND DOES NOT IMPLY THAT WE ARE ATTEMPTING TO COLLECT MONEY FROM ANYONE WHO HAS DISCHARGED THE DEBT UNDER THE BANKRUPTCY LAWS OF THE UNITED STATES.

Enclosures