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APN 009-012-47

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Findings of Fact, Conclusions of Law and Judgments

Title of Document

Affirmation Statement

_____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does not contain** the social security number, driver's license or identification card number, or any "Personal Information" (as defined by NRS 603A.040) of any person or persons. (Per NRS 239B.030)

_____ I, the undersigned hereby affirm that the attached document, including any exhibits, hereby submitted for recording **does contain** the social security number, driver's license or identification card number, or any "Personal Information" (as defined by NRS 603A.040) of a person or persons as required by law: _____

(State specific law)

Jay Shafer

Signature

Attorney

Title

Jay Shafer

Print

1/22/16

Date

Grantees address and mail tax statement:

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IN THE SEVENTH JUDICIAL DISTRICT COURT
LINCOLN COUNTY, NEVADA

PROCYON I & II, LLC, a domestic limited liability company,

Plaintiff,

CASE NO.: CV-0204013
DEPT NO.: I

v.

NEVADA MINERALS, INC., a domestic Corporation; NEW CONCEPT MINING, INC., a domestic corporation; EMCO CORPORATION, a Foreign Corporation; DOES 1-10; and ROE BUSINESS ENTITIES I-C,

Defendants.

ARBITRATION EXEMPT
(Title to Real Estate)

Date of Hearing: January 22, 2016
Time of Hearing: 11:00 A.M

THIS MATTER having come before the Court in chambers on the 22nd day of January, 2016 for the hearing on Plaintiff PROCYON I & II, LLC's Motion to Amend its Order Granting Partial Summary Judgment as to its claims, including Motion and Application for Default Judgment and Motion for Judicial Foreclosure of the Subject Property; Plaintiff being represented by its counsel, Jay A. Shafer, Esq. of the law firm of PREMIER LEGAL GROUP; no opposition being made, having considered the pleadings filed and the exhibits, the Court makes the following Findings of Fact and Conclusions of Law, and enters the decision and order set forth herein:



FINDINGS OF FACT

1
2 1. On or about December 5, 2008, Defendant NEVADA MINERALS borrowed the
3 sum of Four Million Seventy-Seven Thousand Seven Hundred Twenty-Three Dollars
4 (\$4,077,723.00) from Plaintiff PROCYON I & II LLC. The Note was secured by a Deed of
5 Trust in the following property that is the subject of this dispute [hereinafter "the Subject
6 Property"] is described as follows:

7 Patented Lode Mining Claims contained in Mineral Entry Patent 1118478
8 dated May 12, 1944, designated by the Surveyor General as Survey No.
9 4760, covering portions of Sections 25 and 26, Township 3 South, Range 56
10 East, Mount Diablo Meridian, and of Section 31, Township 3 South, Range
11 57 East, Mount Diablo Meridian, also known as THE DOME, TOWNSITE,
12 TOWNSITE NO. 1, TOWNSITE NO. 2, TOWNSITE NO. 5,
13 GRUBSTAKE NO.2, SCHEELITE, SCHEELITE NO. 1, SCHEELITE
14 NO.2, and LIME CAP lode mining claims, in Lincoln County Nevada, and
15 bounded and described in that certain Patent recorded in Book D-1 of
16 Mining Deeds, page 19 as File No. 19243, Lincoln County, Nevada
17 Records.

18 EXCEPTING THEREFROM that portion of land conveyed to the Lincoln
19 County Telephone System, Inc., a Nevada Corporation by a Quitclaim Deed
20 recorded December 17, 1993 in Book 108 of Official Records, page 151 as
21 File No. 101249, Lincoln County, Nevada records, also known as
22 Assessors' Parcel No 009-012-47

23 [hereinafter "the Subject Property"].

24 2. The Deed of Trust to secure NEVADA MINERALS' indebtedness to PROCYON
25 was recorded against the Subject Property on January 16, 2009 in Book 247 of Official Records,
26 page 79 as File No. 133395, Lincoln County, Nevada records.

27 3. Defendant NEVADA MINERALS signed the Promissory Note and Deed of
28 Trust, evidencing its intent to enter into a contract and be bound thereto and received the monies
and value set forth therein.

4. Plaintiff fulfilled its part of the agreement .by loaning Defendant NEVADA
MINERALS the contracted monies.

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1 5. Defendant NEVADA MINERALS promised to pay according to the terms of the
2 note, but did not make a single payment on the note.

3 6. Defendant NEVADA MINERALS' failure to pay constitutes a breach of the
4 agreement, and Default under the Deed of Trust.

5 7. The Principal Balance of the amount due and owing on the subject loan on the
6 note is Four Million Seventy-Seven Thousand Seven Hundred Twenty-Three Dollars
7 (\$4,077,723.00).

8 8. The amount due and owing has never been waived, forgiven, or deemed paid in
9 full or in part. Said amount is also subject to increases for interest, late fees, collection fees, and
10 other fees and charges as provided for in the Subject Note and Deed of Trust.

11 9. The Promissory Note provides that the principal balance shall continue to accrue
12 interest at a rate of Ten Percent (10.00%) per annum until paid in full, which is \$407,772.30 per
13 year or \$1,117.18 per day. As of January 22, 2015, the amount due and owing is \$2,909,136.72.

14 10. The Promissory Note further provides that Plaintiff PROCYON will be entitled to
15 its attorneys' fees and costs.

16 11. Plaintiff PROCYON has incurred attorneys' fees over the past seven years of over
17 \$41,800.00 and costs in excess of Six Thousand Seven Hundred Dollars (\$6,700.00).

18 12. The Subject Deed of Trust secured the Subject Note and encumbered the Subject
19 Property. The Subject Deed of Trust provided that:

20 a. an event of default included failing to make any payment as required by
21 the Subject Note or Deed of Trust when it was due.

22 b. in the event that the default occurs and is continuing, Plaintiff may
23 exercise any, some or all of certain remedies, including: (i) acceleration, by
24 declaring the unpaid portion of the debt to be "immediately due and payable,
25 without further notice or demand;" and/or (ii) enforcement of the Subject Deed of
26 Trust, by, among other options, instituting foreclosure proceedings.
27
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1 13. Defendants NEVADA MINERALS, INC., NEW CONCEPT MINING, INC.
2 and/or EMCO CORPORATION have been served with Process and have been given all required
3 notice and have failed to appear and/or participate and/or prosecute any claim in this litigation.
4 Defendants have no claim of title superior to that of Plaintiff PROCYON and should be allowed
5 to proceed to judicially foreclose upon the Subject Property.

6 14. Service of process of the Motion for Judicial Foreclosure was proper.

7
8 **CONCLUSIONS OF LAW**

9 1. The Court finds that no genuine issues of material fact exist so as to preclude
10 Plaintiff PROCYON from obtaining Judgment against Defendants, and each of them, as to its
11 Application for Default Judgment and Motion for Judicial Foreclosure.

12 2. The Court further finds that a valid contract existed between Defendant
13 NEVADA MINERALS and his successors/assigns/representative(s) and Plaintiff in the form of
14 the loan documents, and that Defendant NEVADA MINERALS signed and/or acknowledged the
15 note/loan, evidencing intent to enter into a contract, and be bound thereto.

16 3. The Court further finds that Plaintiff fulfilled its part of the agreement by loaning
17 Defendant NEVADA MINERALS the subject monies.

18 4. The Court further finds that there is no question of material fact regarding
19 Defendant NEVADA MINERALS and/or his successors/assigns/representative(s) failure to pay
20 Plaintiff the balance due and owing.
21

22 5. The Court further finds that when Defendant NEVADA MINERALS did not cure
23 his default, then Plaintiff properly invoked its right to accelerate full payment of the balance, to
24 act upon the collateral for offsets in part against the balance, which is immediately due and
25 owing.
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6. The Court further finds that pursuant to the Subject Agreement, Plaintiff is entitled to reimbursement for fees and expenses related to collection of the subject loan.

7. The Court further finds that Defendant NEVADA MINERALS failed to act in a manner that is faithful to the purpose of the contract and justified expectations of Plaintiff by failing to make payments and/or pay off the balance of the subject loan.

8. The Court further finds that the subject judicial foreclosure shall be governed by applicable provisions of NRS 40.451 *et seq.*, NRS 21.190 to NRS 21.250, and that the distribution of the proceeds of the foreclosure sale shall be done according to NRS 40.462.

9. The Court further finds that any conflicting claims to proceeds of the foreclosure sale, if any, shall be governed by NRS 40.462(3).

10. The Court further finds that Plaintiff may designate and/or authorize an agent and/or entity to conduct and/or complete the judicial foreclosure process.

11. The Court further finds that Plaintiff shall set a sale/reserve price according to reasonable business practices as well as market value, taking into account all outstanding liens and/or encumbrances, as well as its relative second position.

12. That pursuant to NRS 40.462, the amount of the reserve/opening price set at the sale of the Subject Property is to be Seven Million Thirty Five Thousand, Eight Hundred Fifty Nine Dollars and Seventy Two Cents (\$7,035,859.72) as of January 22, 2016, with interest at One Thousand One Hundred Seventeen Dollars and Eighteen Cents (\$1,117.18) per day thereafter, based upon the following:

- a. Costs and Fees of the Foreclosure Sale, including reasonable trustee's fees, applicable taxes, subject to approval by the Court, upon application and affidavit, but estimated at Five Hundred Dollars and Zero Cents (\$500.00); and

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1 c. Advances, reasonable attorney fees, and other legal expenses incurred by the
2 foreclosing creditor and the person conducting the foreclosure sale.: Total of \$48,500.00,
3 comprised of:

- 4 i. Attorney fees of Forty One Thousand Eight Hundred Dollars and Zero Cents
- 5 (\$41,800.00), and
- 6 ii. Costs of Six Thousand Seven Hundred Dollars (\$6,700.00).

7
8 d. Satisfaction of the obligation being enforced by the foreclosure sale. Total of
9 \$6,986,860.72, (as of January 22, 2016), comprised of:

- 10 i. Four Million Seventy-Seven Thousand Seven Hundred Twenty-Three Dollars
- 11 (\$4,077,723.00);
- 12 ii. Interest to January 22, 2016 of Two Million Nine Hundred Nine Thousand One
- 13 Hundred Thirty-Six Dollars and Seventy-Two Cents (\$2,909,136.72); and

14 **JUDGMENT**

15 **THEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that
16 Plaintiff PROCYON Claim for Judicial Foreclosure shall be and hereby is GRANTED.
17

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that judgment shall be
19 and hereby is entered in favor of Plaintiff PROCYON and against Defendant Nevada Minerals in
20 the amount of Seven Million Thirty Five Thousand, Eight Hundred Fifty Nine Dollars and
21 Seventy Two Cents (\$7,035,859.72) as of January 22, 2016, with interest at One Thousand One
22 Hundred Seventeen Dollars and Eighteen Cents (\$1,117.18) per day thereafter.
23

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the sheriff or other
25 party Plaintiff so authorizes/designates shall conduct a foreclosure sale of the Subject Property,
26 identified as:

27 Patented Lode Mining Claims contained in Mineral Entry Patent 1118478 dated
28 May 12, 1944, designated by the Surveyor General as Survey No. 4760, covering

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1 portions of Sections 25 and 26, Township 3 South, Range 56 East, Mount Diablo
2 Meridian, and of Section 31, Township 3 South, Range 57 East, Mount Diablo
3 Meridian, also known as THE DOME, TOWNSITE, TOWNSITE NO. 1,
4 TOWNSITE NO. 2, TOWNSITE NO. 5, GRUBSTAKE NO.2, SCHEELITE,
5 SCHEELITE NO. 1, SCHEELITE NO.2, and LIME CAP lode mining claims,
6 in Lincoln County Nevada, and bounded and described in that certain Patent
7 recorded in Book D-1 of Mining Deeds, page 19 as File No. 19243, Lincoln
8 County, Nevada Records.

9 EXCEPTING THEREFROM that portion of land conveyed to the Lincoln
10 County Telephone System, Inc., a Nevada Corporation by a Quitclaim Deed
11 recorded December 17, 1993 in Book 108 of Official Records, page 151 as File
12 No. 101249, Lincoln County, Nevada records, also known as Assessors' Parcel No
13 009-012-47.

14 to enforce the amount owed and to set a reserve/bid price of Seven Million Thirty Five
15 Thousand, Eight Hundred Fifty Nine Dollars and Seventy Two Cents (\$7,035,859.72) as of
16 January 22, 2016, with interest at One Thousand One Hundred Seventeen Dollars and Eighteen
17 Cents (\$1,117.18 per day) after January 22, 2016.

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that if the total sum
19 with interest at Seven Million Thirty Five Thousand, Eight Hundred Fifty Nine Dollars and
20 Seventy Two Cents (\$7,035,859.72) as of January 22, 2016, with interest at One Thousand One
21 Hundred Seventeen Dollars and Eighteen Cents (\$1,117.18 per day) per day after January 22,
22 2016 and all costs accrued subsequent to this judgment are not paid within 5 days of the sale, the
23 sheriff shall sell the Property at a public sale between 9:00 a.m. and 5:00 p.m. to the highest
24 bidder for cash.

25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiff shall
26 advance all subsequent costs of this action and shall be reimbursed for them by the sheriff if
27 Plaintiff is not the purchaser of the Subject Property for sale. If Plaintiff is the purchaser, the
28 sheriff shall credit Plaintiff's bid with the total sum with interest and cost accruing subsequent to
this judgment, or such part of it, to pay the bid in full.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon filing the certificate of sale, the sheriff shall distribute the proceeds of the sale, so far as they are sufficient, by paying according to the description herein, and according to NRS 40.462, subject to that any conflicting claims to proceeds pursuant to NRS 40.462(3).

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this Court may issue modified instructions at any time prior to the sheriff's sale without changing the sale date.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that on filing the certificate of sale, Defendants, and each of them, and all persons claiming by, through or under them, or any of them, shall be foreclosed and forever barred from any and all right, title, claim, interest or lien in or to the Property or with respect thereto except such rights of redemption as they may have by law, if any.

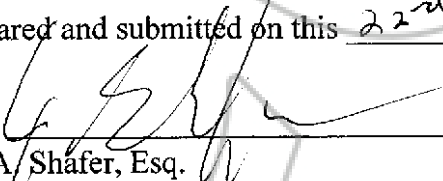
IT IS FURTHER ORDERED, ADJUDGED AND DECREED that jurisdiction of this action is retained to enter further orders that are proper, including writs of restitution and/or execution thereto.

IT IS SO ORDERED.

DATED AND DONE this 22 day of JANUARY, 2016.


DISTRICT COURT JUDGE

Prepared and submitted on this 22nd day of January 2016 by:

By: 
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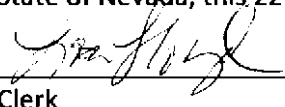
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Certification of Copy

This document to which this certificate is attached is a full, true and correct copy of the original, on file in the County Clerk's Office, Pioche, Nevada.

In witness whereof, I have hereunto set my hand and affixed the official seal of the County of Lincoln, State of Nevada, this 22nd day of January, 2016.



Clerk

Deputy Clerk

