

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

IN THE COURT OF COMMON PLEAS  
2009-CP-42-6061

First Piedmont Federal Savings )  
and Loan Association, )  
Gaffney, South Carolina, )  
 )  
Plaintiff, )  
 )  
-vs- )  
 )  
Swain, Inc., Phillip A. Swain, Sugar Ridge )  
Commons Homeowners Association, Inc. )  
and McRey Distributors, Inc. )  
 )  
Defendants. )  
\_\_\_\_\_ )

**JUDGMENT AND DECREE**  
(Foreclosure)

2010 JAN 20 AM 10:05  
MARCELO TORRES  
CLERK OF COURT

This is an action for the foreclosure of a real estate mortgage on property located in Spartanburg County, South Carolina. The action was properly commenced by the filing of a Lis Pendens and by the filing and service of a Summons and Complaint upon the Defendants. The Defendants were notified of the hearing which was held on January 20, 2010, before the undersigned at the Office of the Master-in-Equity, Spartanburg, South Carolina. The Lis Pendens, Summons and Complaint, Proof of Personal Service, Affidavit(s) of Default, Order of Reference, and Notice of Hearing are all a part of the record. I find that this court has jurisdiction of the parties and of the subject matter of this action.

The Plaintiff appeared at the hearing by and through its attorney, James R. Thompson, who testified concerning the note and mortgage delivered to the Plaintiff by Swain, Inc.

The Defendant Swain, Inc., promised to pay to the order of First Piedmont Federal Savings and Loan Association the principal sum of One Hundred Ninety-Four Thousand Eight Hundred and 00/100 Dollars (\$194,800.00) bearing interest and payable as shown by the note. The note, dated August 30, 2006, was secured by a mortgage of even date given by the said Defendant, which

mortgage was recorded in the R.M.C. Office for Spartanburg County, S. C., in Mortgage Book 3736, page 463, on August 31, 2006. The note and mortgage were introduced into evidence. I find that the mortgage of the Plaintiff is a first lien.

I find that since the inception of this action, Plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property, or the date the mortgage was executed, to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

1. Lis Pendens
2. Summons and Complaint
3. Order of Reference
4. Notice of Hearing
5. Transcript of Testimony
6. Proposed Final Decree
7. Notice of Sale
8. Other documents as applicable pertaining to finalization of this action.

Additionally, he has arranged for service of process on the Defendant, has scheduled and attended the hearing in this matter, and responded to any inquiries made by the Defendant concerning the balance due and/or the foreclosure action. Future duties include arranging and coordinating the amount to be bid by the Plaintiff, representation of the Plaintiff at the sale, and preparation of after sale documentation as required. In light of the potential liabilities inherent in a property matter, the attendant responsibilities, and the size of the total mortgage debt, I find that the attorney's fee requested by the Plaintiff in the amount of Two Thousand Five Hundred and 00/100 Dollars (\$2,500.00) is reasonable.

From the testimony, I find that the Defendant, Swain, Inc. is in default of the terms of the note and mortgage. I, therefore, find that Plaintiff is entitled to declare, and has declared, the entire amount secured by said mortgage due and owing, with interest at the rate provided in the note, and other costs and expenses of collection, including an attorney's fee, which is as follows:

A handwritten signature in black ink, appearing to be the name 'J. J. Swain', is located in the bottom right corner of the page.

Principal Due on Default	\$ 194,800.00
Interest from 06/01/2009 thru 01/20/2010 @ 6.875%	\$ 7,943.88
Late charges	\$ 370.17
Funds remaining in LIP account	\$ (51,338.00)
Costs prior to hearing (Filing, Service, etc.)	\$ 573.40
Attorney's Fee	\$ 2,500.00
<b>TOTAL DEBT</b> secured by Note and Mortgage including interest to 01/20/2010	\$ 154,849.45

Pursuant to a Temporary Restraining Order of the South Carolina Supreme Court dated May 4, 2009, and a further Administrative Order dated May 22, 2009, the Home Affordable Modification Program (HMP) is inapplicable to the mortgage loan which is the subject of this action, and the foreclosure action may therefore proceed.

I find that the Plaintiff has proven the allegations of its Complaint by a preponderance of the evidence and that it is entitled to the relief demanded. I find that the Plaintiff is not seeking a Deficiency Judgment in the event that the property does not sell for an amount sufficient to satisfy the aforesaid indebtedness. Therefore, the sale will be final on the sales date. It is, therefore,

ORDERED, ADJUDGED AND DECREED that Plaintiff is awarded judgment in the amount of One Hundred Fifty-Four Thousand Eight Hundred Forty-Nine and 45/100 Dollars (\$154,849.45), plus interest as hereinafter provided and any subsequent cost incurred. It is further

ORDERED that the Plaintiff's mortgage be foreclosed, the equity of redemption of all parties hereto be forever barred, and that the real property hereinafter described be sold by the Master-in-Equity on sales day on March 1, 2010, or on some convenient subsequent sales day, after due advertisement, and that such sale will be final on the sales date. The terms of the sale shall be cash, with the successful bidder to pay for stamps and deed; that any successful bidder, except plaintiff, be



required to deposit, in cash, not less than five (5%) percent of the amount of the successful bid, such deposit to be applied toward the purchase price upon compliance, or forfeited in the event of noncompliance. Should the successful bidder fail to comply with the terms of his bid within 15 days from the date of sale, the Master-in-Equity will readvertise and resell said property at the risk of the defaulting purchaser. It is further

ORDERED that in the event an agent of the Plaintiff does not appear at the time of sale, the within property shall be automatically withdrawn from sale and sold at the next available sales date upon the same terms and conditions as set forth in this Decree. It is further

ORDERED that the proceeds of sale be applied first to the costs, disbursements and expenses, to include attorney fees in this action, and second toward the amounts due the Plaintiff, including interest through the date of this Decree at the contract rate, and thereafter to the date of compliance at the legal rate, together with late charges and the costs of securing the property, if any. It is further

ORDERED that any successful bidder shall be entitled to immediate possession of the premises upon compliance with the bid, and upon failure to acquire possession of the said premises, the sheriff of this county shall put the purchaser into possession and this Decree shall be his warrant therefor. It is further

ORDERED that any funds remaining following the payment of the Plaintiff, the costs, and attorney fees shall be retained subject to the further Order of this Court.


The property herein ordered to be sold is described as follows:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as Lot No. 32, upon plat of survey of Sugar Ridge Commons, Phase II, prepared by Gramling Brothers Surveying, dated July 22, 2002 and recorded in Plat Book 153 at Page 582 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is hereby made to the above referred to plat and record thereof.

A handwritten signature in black ink, appearing to be a stylized name, located in the bottom right corner of the page.

Tax Map #: 2-43-00-008.93  
Property Address: 527 Cider Park Drive, Lot #32  
Boiling Springs, SC 29316

IT IS SO ORDERED!

  
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GORDON G. COOPER  
MASTER-IN-EQUITY  
SPARTANBURG COUNTY, S.C.

Spartanburg, South Carolina

January 20, 2010

2010 JAN 20 AM 10:05  
MARC KITCHENS

