

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

Case No. 2009-CP-42-4952

Regions Bank,

Plaintiff,

vs.

Swain Incorporated, Phillip A. Swain,
Robert H. Wallace, Diane C. Wallace,
Crooked Creek Homeowners Association,
Inc., Phillip M. Humphrey, and Laura L.
Humphrey,

Defendants.

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE**

(Deficiency Demanded)

FILED
FEB 17 PM 12:04
CLERK OF COURT
SPARTANBURG COUNTY

I, the undersigned, Master in Equity for Spartanburg County, hereby find that pursuant to the Order of Default (as to Robert H. Wallace, Diane C. Wallace, and Crooked Creek Homeowners Association, Inc.) and Order of Reference granted in the above entitled case, a hearing was held on February 17, 2010, attended by Louise M. Johnson, of Haynsworth Sinkler Boyd, P.A., attorneys for the Regions Bank ("Plaintiff"), Reginald L. Foster of Reginald L. Foster, P.A., attorney for Defendants Swain Incorporated and Phillip A. Swain, and Robert H. Wallace on behalf of himself. Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on June 17, 2009, the Second Lis Pendens was filed on July 2, 2009, the Third Lis Pendens on July 21, 2009, the Fourth Lis Pendens on August 10, 2009, the Fifth Lis Pendens on August 26, 2009, and the Sixth Lis Pendens on September 9, 2009.

2. The Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint with Exhibits were filed on September 9, 2009.

3. The Civil Action Coversheet, Certificate of Exemption from ADR, Summons, and Complaint with Exhibits will hereinafter be collectively referred to as "Pleadings".

4. Said Pleadings were served upon Swain Incorporated, Phillip A. Swain, Robert H. Wallace, Diane C. Wallace, Crooked Creek Homeowners Association, Inc., Phillip M. Humphrey, and Laura L. Humphrey as evidenced by the Affidavit of Service items that is of record herein.

5. On October 5, 2009, a Notice of Dismissal was entered by the court dismissing Phillip M. Humphrey and Laura L. Humphrey from the action.

6. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of Defendants Robert H. Wallace, Diane C. Wallace, and Crooked Creek Homeowners Association, Inc. Consequently, on November 13, 2009, the Order of Default as to these defendants was entered by the Court.

7. Upon information and belief, Phillip A. Swain is not an individual entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

8. Defendants were notified of the time, date, and place of the hearing in this matter.

9. From the Complaint herein, and from the examination of the records in the Office of the Register of Deeds for Spartanburg County, I find that on or about April 5, 2007, Swain, Incorporated made, executed, and delivered unto Plaintiff a Promissory Note in the original principal amount of Four Hundred Four Thousand and 00/100 (\$404,000.00) Dollars ("Note-1").

10. To secure the repayment of Note-1, and the debt evidenced thereby, Swain, Incorporated made, executed, and delivered unto Plaintiff a certain Construction Mortgage dated April 5, 2007 ("Mortgage-1"), whereby Swain, Incorporated mortgaged to Plaintiff the real property described in Mortgage-1 (commonly known as "204 Kayak Place"). Mortgage-1 was recorded on April 6, 2007, in the Spartanburg County Register of Deeds Office in Book 3866 at Page 976.

11. From the Complaint herein, and from the examination of the records in the Office of the Register of Deeds for Spartanburg County, I find that on or about April 5, 2007, Swain, Incorporated made, executed, and delivered unto Plaintiff a Promissory Note in the original

principal amount of Three Hundred Sixty Six Thousand and 00/100 (\$366,400.00) Dollars (“Note-2”).

12. To secure the repayment of Note-2, and the debt evidenced thereby, Swain, Incorporated made, executed, and delivered unto Plaintiff a certain Construction Mortgage dated April 5, 2007 (“Mortgage-2”), whereby Swain, Incorporated mortgaged to Plaintiff the real property described in Mortgage-2 (commonly known as “104 Chilko Court”). Mortgage-2 was recorded on April 6, 2007, in the Spartanburg County Register of Deeds Office in Book 3866 at Page 987.

13. From the Complaint herein, and from the examination of the records in the Office of the Register of Deeds for Spartanburg County, I find that on or about May 3, 2007, Swain, Incorporated made, executed, and delivered unto Plaintiff a Promissory Note in the original principal amount of Five Hundred Forty Two Thousand and 00/100 (\$542,000.00) Dollars (“Note-3”).

14. To secure the repayment of Note-3, and the debt evidenced thereby, Swain, Incorporated made, executed, and delivered unto Plaintiff a certain Construction Mortgage dated May 3, 2007 (“Mortgage-3”), whereby Swain, Incorporated mortgaged to Plaintiff the real property described in Mortgage-3 (commonly known as “949 Tradition Lane”). Mortgage-3 was recorded on May 4, 2007, in the Spartanburg County Register of Deeds Office in Book 3885 at Page 228.

15. To further induce Plaintiff to enter into Note-1, Note-2, and Note-3, and as additional security for Note-1, Note-2, and Note-3 and the debt evidenced thereby, and for valuable consideration given, Phillip A. Swain made, executed and delivered unto Plaintiff those certain Commercial Guaranty agreements.

16. Swain, Incorporated is the legal owner of the Mortgaged Property.

17. Mortgage-1, Mortgage-2, and Mortgage-3 constitute first liens on the subject properties therein described.

18. The titleholder of record in and to the subject properties as of the filing of the Lis Pendens in this action is Swain, Incorporated.

19. Payment due on the Note-1, Mortgage-1, Note-2, Mortgage-2, Note-3, and Mortgage-3 has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amounts due thereon and has placed the Note-1, Mortgage-1, Note-2, Mortgage-2, Note-3, and Mortgage-3 in the hands of the attorney herein for collection.

20. The following amounts are due and owing on the Plaintiff's Notes and Mortgages as of February 17, 2010, including costs and expenses of collections and an attorney's fee. The costs, and expenses of collection, including attorney's fees have been totaled and allocated equaled among the Note-1, 204 Kayak Place, Note-2, 104 Chilko Court, and Note-3, 949 Tradition Lane as Regions Bank foreclosed the mortgages in one action.

Note-1, 204 Kayak Place

(a) Principal Balance	\$404,000.00
(b) Accrued Interest	\$20,613.47
(c) Late fees and Other Charges	\$799.90
(d) Real Estate Taxes	<u>\$16,432.19</u>
Balance on Note-1	\$441,845.56
(e) Filing, service, motion, and referral fees	\$301.64
Total Balance- Note-1, 204 Kayak Place	\$442,147.20

(f) Attorneys' Fees	\$1,833.33
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Total Debt secured by Note-1, 204 Kayak Place	\$443,980.53
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Interest continues to accrue on Note-1, 204 Kayak Place at the rate of 4.75% per annum (which is currently \$55.45720 *per diem*), until judgment and at the Note-1 rate thereafter until paid.

Note-2, 104 Chilko Court

(a) Principal Balance	\$365,200.75
(b) Accrued Interest	\$18,477.30
(c) Late fees and Other Charges	\$831.97
(d) Real Estate Taxes	<u>\$1,881.29</u>
Balance on Note-2	\$386,391.31
(e) Filing, service, motion, and referral fees	\$301.64

Total Balance- Note-2, 104 Chilko Court	\$386,692.95
(f) Attorneys' Fees	\$1,833.33
Total Debt secured by Note-2, 104 Chilko Court	\$388,526.28

Interest continues to accrue on Note-2, 104 Chilko Court at the rate of 4.75% per annum (which is currently \$48.43444 *per diem*), until judgment and at the Note-2 rate thereafter until paid.

Note-3, 949 Tradition Lane

(a) Principal Balance	\$527,068.01
(b) Accrued Interest	\$27,021.23
(c) Late fees and Other Charges	\$1,108.92
(d) Real Estate Taxes	<u>\$3,133.04</u>
Balance on Note-3	\$558,331.20
(e) Filing, service, motion, and referral fees	\$301.64
Total Balance- Note-3, 949 Tradition Lane	\$558,632.84

(f) Attorneys' Fees \$1,833.34

Total Debt secured by Note-3, 949 Tradition Lane \$560,466.18

Interest continues to accrue on Note-3, 949 Tradition Lane at the rate of 4.75% per annum (which is currently \$69.95708 *per diem*), until judgment and at the Note-3 rate thereafter until paid.

21. Plaintiff is seeking foreclosure of its Mortgage and the right to a personal or deficiency judgment against Swain, Incorporated and Phillip A. Swain, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. However, Plaintiff reserves the right to waive deficiency prior to the sale.

22. The subject mortgage is not a mortgage owned or guaranteed by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac), and Plaintiff is not a participant in the HMP.

23. The following defendants may claim an interest in the Mortgaged Properties:

(a) The defendants Robert H. Wallace and Diane C. Wallace by virtue of that certain second mortgage on 204 Kayak Place dated September 25, 2006, in the amount of \$30,000.00 recorded on September 26, 2006, in the Spartanburg County Register of Deeds Office in Book

3752 at Page 184; by virtue of that certain Mortgage Subordination Agreement on 204 Kayak Place dated April 2, 2007, and recorded on April 6, 2007, in the Spartanburg County Register of Deeds Office in Book 3866 at Page 984; by virtue of that certain second mortgage on 104 Chilko Court dated January 12, 2006, in the amount of \$41,500.00 recorded on January 13, 2006, in the Spartanburg County Register of Deeds Office in Book 3592 at Page 236; by virtue of that certain Mortgage Subordination Agreement on 104 Chilko Court dated April 2, 2007, and recorded on April 6, 2007, in the Spartanburg County Register of Deeds Office in Book 3866 at Page 995; by virtue of that certain second mortgage on 949 Tradition Lane dated October 18, 2006, in the amount of \$50,000.00 recorded on October 19, 2006, in the Spartanburg County Register of Deeds Office in Book 3767 at Page 738; by virtue of that certain Mortgage Subordination Agreement on 949 Tradition Lane dated April 30, 2007, and recorded on May 4, 2007, in the Spartanburg County Register of Deeds Office in Book 3885 at Page 236.

(b) The defendant Crooked Creek Homeowners Association, Inc. by virtue of that certain Notice of Lien dated March 26, 2009, in the amount of \$586.12 plus \$10.00 for costs recorded on March 27, 2009, in the Spartanburg County Register of Deeds Office in Book 4202 at Page 436; by virtue of that certain Notice of Lien dated March 26, 2009, in the amount of \$586.12 plus \$10.00 for costs recorded on March 27, 2009, in the Spartanburg County Register of Deeds Office in Book 4202 at Page 437.

In the event there is a surplus from the sale of the subject properties, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRPC. Any interest of these defendants are subordinate to Plaintiff's first Mortgages on the subjection properties.

CONCLUSIONS OF LAW

I, therefore, conclude that the Mortgages are not subject to modification under the Home Affordable Modification Program, and Plaintiff should have judgment of foreclosure of the Mortgages and the Mortgaged Properties should be ordered sold separately at public auction

after due advertisement, and a personal or deficiency judgment against Swain, Incorporated and Phillip A. Swain, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Spartanburg County.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the subject Mortgage is not subject to modification under the Home Affordable Modification Program, and Plaintiff should have judgment of foreclosure of the Mortgages and the Mortgage Properties should be ordered sold separately at public auction after due advertisement.

2. Mortgage-1, Mortgage-2, and Mortgage-3 constitute first liens on the subject properties therein described.

3. That there is due to the Plaintiff on its Notes and Mortgage set forth in the Complaint the sum \$1,392,972.99 as of February 17, 2010, and Plaintiff is entitled to a personal judgment against Defendants Swain, Incorporated and Phillip A. Swain for said amount.

4. The amount due in the proceeding paragraph shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter until paid on Note-1, 204 Kayak Place at the rate of 4.75% per annum (which is currently \$55.45720 *per diem*), on Note-2, 104 Chilko Court at the rate of 4.75% per annum (which is currently \$48.43444 *per diem*), and on Note-3, 949 Tradition Lane at the rate of 4.75% per annum (which is currently \$69.95708 *per diem*) from February 17, 2010, until the entry of judgment and at the Note rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the property after February 17, 2010, such advances may be added to the total judgment debt.

5. That Swain, Incorporated and Phillip A. Swain are liable for the aforesaid debt, shall on or before the date of sale of the property hereinafter described, may pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint and hereafter set forth, be sold separately by the Spartanburg Master in Equity or his agent, at public auction, at the Spartanburg County Courthouse, Spartanburg, South Carolina, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Spartanburg Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

7. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment. However, Plaintiff reserves the right to waive deficiency prior to the sale.

8. That after advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Spartanburg Master in Equity convey to the purchaser, or purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former

highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

9. That the proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

10. That upon the making of the sale of said mortgaged premises, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed; and the Sheriff of Spartanburg County shall put the holder of the deed into possession of the premises.

11. That each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

13. The following is a description of the premises herein ordered to be sold, and the subject properties shall be sold separately:

Note-1, 204 Kayak Place

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. 48 on a plat of survey of Crooked Creek Phase II and III prepared by Gramling Brothers Surveying, Inc. dated November 15, 2004 and recorded **Plat Book 158 at Page 266**, see also plat revised July 19, 2005 and recorded in **Plat Book 158 at Page 712**, see also plat revised May 25, 2006 and recorded in **Plat Book 159 at Page 854** in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is made to the above referred-to plats and records thereof.

THIS BEING the property conveyed to Mortgagor herein by deed from RJK II Corporation dated September 22, 2006 and recorded September 25, 2006 in Deed Book 86-U at Page 265 in the Office of the Register of Deeds for Spartanburg County.

LESS AND EXCEPTING All that certain piece, parcel or lot of land situate, lying and being in the State of South Carolina, County of Spartanburg, being shown on a survey entitled Phillip & Laura Humphrey by Zimuth Control Surveying, Inc., SC RLS #19897, dated May 23, 2007, recorded in Plat Book 161 at page 630, Register of Deeds for Spartanburg County, South Carolina.

BMR: 2 38-00 109.39

Property Address: 204 Kayak Place (Lot 48)
Chesnee, SC 29323

Note-2, 104 Chilko Court

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. 58**, containing **0.56 acre**, more or less, upon plat of survey of Crook Creek, Plat II & III, prepared by Gramling Brothers Surveying, Inc., dated November 15, 2004 and recorded in Plat Book 158 at Page 712; said lot also being shown on plat of survey recorded in Plat Book 158 at Page 266, both plats being recorded 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 plats and records thereof.

THIS BEING the same property conveyed to Mortgagor herein by deed from RJK II Corporation, a corporation organized and existing under the laws of South Carolina, dated January 12, 2006 and recorded January 13, 2006 in Deed Book 84-V at Page 949 in the Office of the Register of Deeds for Spartanburg County.

BMR: 2 38-00 109.49

Property Address: 104 Chilko Court (Lot 58)
Chesnee, SC 29323

Note-3, 949 Tradition Lane

ALL THAT CERTAIN piece, parcel or tract of land, situate, lying and being in the State of South Carolina, County of Spartanburg, being shown and designated as **Lot No. 173** upon plat of survey entitled, "Woodfin Ridge, Section III" prepared by Souther Land Surveying dated November 7, 2003 and recorded in

Plat Book 155 at Page 188 in the Office of the Register of Deeds for Spartanburg County. For a more complete and particular description, reference is made to the above referenced-to plat and record thereof.

THIS BEING the same property conveyed to Swain, Inc., a North Carolina corporation, by deed from Louis N. Vetoe, Jr. and Elizabeth A. Vetoe as co-Trustees of the Vetoe Family Revocable Trust dated the 1st day of September, 2000, dated August 30, 2006 and recorded August 31, 2006 in Deed Book 86-Q at Page 460 in the Office of the Register of Deeds for Spartanburg County.

BMR: 2 22-00 382.00

Property Address: 949 Tradition Lane
Inman, SC 29349

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

15. The properties shall be sold separately to the highest bidder as provided by law.

Gordon G. Cooper
Spartanburg County Master in Equity

_____, 2010

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SPARTANBURG COUNTY
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