

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

First Community Bank,

Plaintiff,

v.

Hammond's Ferry Commercial I, LLC
Christian Schoen,
The Clubhouse at Riverside Village Owners
Association, Inc., and
Riverside Village Owners Association, Inc.,

Defendants.

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

SUMMONS

(Non-Jury)
(Foreclosure of Mortgage)
(Action on Guaranty)
(Deficiency Demanded)

TO: THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber, at his office at Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

s/W. Cliff Moore, III
W. Cliff Moore, III (S.C. Bar No. 4067)
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Attorney for the Plaintiff

July 6, 2022

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Christian Schoen,
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IN THE COURT OF COMMON PLEAS
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COMPLAINT

(Non-Jury)
(Foreclosure of Mortgage)
(Action on Guaranty)
(Deficiency Demanded)

Plaintiff, complaining of the Defendants, alleges that:

1. Plaintiff is a bank organized and existing pursuant to the laws of the State of South Carolina and it is the owner and holder of the notes, mortgage, and related documents that are the subject of this action.

2. Defendant Hammond's Ferry Commercial I, LLC ("Borrower") is a limited liability company that is organized and exists pursuant to the Laws of the State of South Carolina and that its principal place of business is located in Aiken County, South Carolina.

3. Defendant Christian Schoen ("Schoen") is a citizen and resident of the State of Georgia and does business in Aiken County, South Carolina.

4. Defendant The Clubhouse at Riverside Village Owners Association, Inc. ("Clubhouse Association") is a corporation that is organized and exists pursuant to the Laws of the State of South Carolina and that its principal place of business is located in Aiken County, South Carolina.

5. Defendant Riverside Village Owners Association, Inc., formerly known as Ballpark Village Owners Association, Inc., ("Riverside Association") is a corporation that is organized and exists pursuant to the Laws of the State of South Carolina and that its principal place of business is located in Aiken County, South Carolina.

6. This action is for foreclosure of a mortgage on real property situated and located in Aiken County, South Carolina. This action is for foreclosure of a mortgage on real property that is not the principal residence of the Borrower; therefore, the Administrative Order of the South Carolina Supreme Court dated May 2, 2011 does not apply to this foreclosure action.

FOR A FIRST CAUSE OF ACTION

(Foreclosure of Mortgage)

7. On January 16, 2018, the Borrower and Plaintiff entered into a Construction Loan Agreement (“Loan Agreement”). A copy of the Loan Agreement is attached to this Complaint as Exhibit 1 and its terms and conditions are incorporated in this Complaint by reference.

8. On January 16, 2018, Borrower made, executed and delivered to Plaintiff a Promissory Note (Commercial – Draw) (“Note”), in writing, in the original principal amount of Eight Million One Hundred Thousand and 00/100 Dollars (\$8,100,000.00), payable pursuant to the terms of repayment as stated in the Note. A copy of the Note is attached to this Complaint as Exhibit 2 and its terms and conditions are incorporated in this Complaint by reference.

9. In order to secure the obligations stated in the Note, Borrower made, executed and delivered to Plaintiff a Mortgage (With Future Advance Clause) dated January 16, 2018 (the “Mortgage”), through which the Borrower conveyed to Plaintiff, by way of mortgage, real property described in the Mortgage that is located in Aiken County, South Carolina. The Mortgage was recorded in the Office of the Register of Mesne Conveyance for Aiken County (the “RMC”) on January 18, 2018 in Book 4701, page 2293, and re-recorded on April 19, 2018, in Book 4716, page 1035. A copy of the Mortgage is attached to this Complaint as Exhibit 3 and its terms and conditions are incorporated in this Complaint by reference.

10. The real property encumbered by the lien of the Mortgage is described as follows (“Property”):

Fee Parcels

ALL those certain condominium units and apartments lying and bring in the City of North Augusta in Aiken County, South Carolina and bring known as **Unit 1 – Parking Garage Unit, Unit 3 – Office Unit, and Unit 4 – Residential Unit** of The Clubhouse at Riverside Village Condominium Horizontal Property Regime and bring more particularly shown and described by reference to the Master Deed for The Clubhouse at Riverside Village Condominium Horizontal Property Regime dated December 15, 2017, and recorded in the Aiken County RMC Office on December 15, 2017, in Book 4697, Pages 788-855, and said Master Deed is incorporated herein by reference. Said units are located on a portion of that parcel

of land lying and bring in the City of North Augusta in Aiken County, South Carolina, containing approximately 0.80 acre and designated as Tract A1 on that certain Final Subdivision Plat of Ballpark Village at Hammond's Ferry prepared for Greenstone Hammond's Ferry, LLC by John M. Bailey, SC PLS No. 7399, of John M. Bailey & Associates, P.C., bearing Project No. 15039, dated October 17, 2016, and last revised May 8, 2017, and recorded in the Aiken County Register of Deeds Office on May 11, 2017, in Plat Book 59, pages 949-50.

TOGETHER WITH an undivided interest in the common elements and limited common elements appertaining to the above-described condominium unit and apartment as set forth in said Master Deed for The Clubhouse at Riverside Village Condominium Horizontal Property Regime.

This being the same property conveyed to Hammond's Ferry Commercial I, LLC by deed of Greenstone Hammond's Ferry LLC dated effective January 16, 2018, and recorded on January 18, 2018, in the Aiken County RMC Office in Book 4701, Page 2285 and re-recorded in said records in Book 4716, Page 1029.

Formerly known as portion of TMP No.: 007-18-05-002;
Now Designated as TMP No's.: 007-18-05-007, 007-18-05-006, and
007-18-05-008.

Easement Parcels

TOGETHER WITH easements established by that Master Declaration of Covenants, Conditions and Restrictions by Greenstone Hammond's Ferry, LLC dated May 16, 2017, and recorded on May 16, 2017, in the Aiken County Register of Deeds office in Book 4662, page 865.

11. The Borrower, Schoen and Plaintiff, modified the Loan Agreement and Note by entering a Loan Modification Agreement (the "Modification Agreement") dated August 6, 2021. A copy of the Modification Agreement is attached to this Complaint as Exhibit 4 and its terms and conditions are incorporated in this Complaint by reference.

12. Plaintiff is the owner and holder of the Loan Agreement, the Note, the Mortgage, and the Modification Agreement (collectively the "Loan Documentation").

13. As of the date of the filing of the Lis Pendens associated with this action, the Borrower is the owner of record of the Property.

14. The Borrower is in default on the terms and conditions of the Loan Documentation in that it has failed comply with the terms and conditions of the Loan Documentation. Specifically, Borrower has:

- a. Failed to make the complete payments due on March 2, 2022 and April 2, 2022. The Loan Documents required Borrower to make payment for accrued interest and an agreed payment amount against the principal balance, but Borrower only paid the interest portion of the payments.
- b. Failed to make any payment due on May 2, 2022 and June 2, 2022.
- c. Failed to make Monthly Tax Deposits as required by Section 4 of the Modification Agreement.
- d. Failed to timely pay the ad valorem taxes due to the City of North Augusta on May 1, 2022.

15. There is now due and owing to Plaintiff on the Note the principal sum of Seven Million Eight Hundred Three Thousand Ten and 24/100 Dollars (\$7,803,010.24), together with accrued and unpaid interest, Monthly Tax Deposits and late charges as provided in the Note, and for such other and further charges that may be due and owing pursuant to the terms and conditions of the Note.

16. Despite demand, the Borrower has not paid the amounts due pursuant to the terms and conditions of the Note, as amended by the Modification Agreement.

17. Plaintiff has placed the Loan Documentation in the hands of the undersigned attorney for collection and, pursuant to the terms of the Loan Documentation, Plaintiff is entitled to an award of the costs of this action and reasonable attorney's fees incurred for the collection of the amounts due under the Note.

18. Plaintiff elects to foreclose its Mortgage on the Property, reserving all other rights and remedies that the Plaintiff may have under the Loan Documentation, including the right to enter a deficiency judgment against the Borrower.

19. The Plaintiff is entitled to immediate entry of judgment against the Borrower for the amount determined to be due on the Note, as amended by the Modification Agreement.

20. The Plaintiff is entitled to foreclose the lien of the Mortgage to satisfy the amounts due on the Judgment, if the Borrower fails to pay the amount determined by the Court to be due on the Loan Documentation. The foreclosure that the Plaintiff seeks is subject to all *ad valorem* taxes on the Property and any assessments against the Property for the Municipal Improvement District as set out in the Notice of Assessment Lien recorded in the Office of the

Register of Deeds for Aiken County on May 16, 2017 in record book 4662 at page 781, or otherwise.

21. The Master Parking Facilities Dedicated Parking Space Agreement dated January 16, 2018 and recorded on January 18, 2018 in record book 4701 at page 2313 in the Office of the Register of Deeds for Aiken County, South Carolina encumbers the Property and identifies rights to designated parking spaces. The Plaintiff seeks foreclosure of the Property subject to that Master Parking Facilities Dedicated Parking Space Agreement.

22. The Clubhouse Association may have, or claim to have, some right, title, or interest in the Property by virtue of the rights given to it pursuant to the terms and conditions of the Master Deed for The Clubhouse at Riverside Village Condominium Horizontal Property Regime dated December 15, 2017 and recorded in the Office of the Register of Deeds for Aiken County, South Carolina on December 15, 2017 in record book 4697 at page 788, including, but not limited to, the right to make assessments against the Property and to collect those assessments. Any claim of the Clubhouse Association to the Property is junior and inferior to the lien of the Plaintiff's Mortgage and the Plaintiff is entitled to have the Property sold free and clear of any claim by the Clubhouse Association of a lien for assessments.

23. The Riverside Association may have, or claim to have, some right, title, or interest in the Property by virtue of the rights given to it pursuant to the terms and conditions of the Master Declaration of Covenants, Conditions, and Restrictions for Ballpark at Hammonds Ferry, dated May 16, 2017 and recorded May 16, 2017 in the Office of the Register of Deeds for Aiken County in record book 4662 at page 865, as amended by First Amendment to Master Declaration of Covenants, Conditions, and Restrictions for Ballpark at Hammond's Ferry dated January 31, 2019 and recorded February 6, 2019 in the Office of the Register of Deeds for Aiken County in record book 4761 at page 2256 including, but not limited to, the right to make assessments against the Property and to collect those assessments. Any claim of the Riverside Association to the Property is junior and inferior to the lien of the Plaintiff's Mortgage and the Plaintiff is entitled to have the Property sold free and clear of any claim by the Riverside Association of a lien for assessments.

FOR A SECOND CAUSE OF ACTION
(Action on Guaranty)

24. The allegations contained in paragraphs 1 through 23 of this Complaint are repeated as if alleged verbatim.

25. On January 16, 2018, Schoen made, executed and delivered to the Plaintiff his Guaranty (the “Guaranty”) through which he guaranteed the full and timely repayment of the Note. A copy of the Guaranty is attached to this Complaint as Exhibit 5 and its terms and conditions are incorporated in this Complaint by reference. Schoen agreed to the modification of the Loan Documentation set out in the Modification Agreement.

26. Plaintiff is entitled to the immediate entry of judgment against Schoen for the amount determined to be due on the Note, as amended by the Modification Agreement.

WHEREFORE, having fully set forth its complaint against the Defendants, Plaintiff prays:

a. That the amount due on the Note, as amended by the Modification Agreement, be established by the Court, including all unpaid principal, accrued interest, late charges, attorney’s fees, costs of this action, advances made by Plaintiff, and any other amounts that may be due pursuant to the terms and conditions of the Agreement, and that Plaintiff be granted immediate judgment against Borrower and Schoen in that amount;

b. That this Court issue its Order declaring that the Mortgage is a first priority lien on the Property and directing that the Property be foreclosed and sold in accordance with the law and practices of this Court, and Defendants, or anyone claiming by, through or under them, be barred and forever foreclosed of all right, title, and interest in the Property, including any equity of redemption;

c. That the proceeds of the foreclosure sale of the Property be applied first to the costs of this action and then to the amount of Plaintiff’s judgment, and, if those proceeds are insufficient to fully satisfy the judgment, that a deficiency be established by the Court against the Borrower and Schoen; and

d. For such other and further relief that may be just and proper.

(Signature to Follow)

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July 6, 2022