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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

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IN THE

Supreme Court of Virginia

AT RICHMOND

800908

ALBERT B. LIPPS, et al.,

Appellants,

v.

FIRST AMERICAN SERVICE
CORPORATION, et al.,

Appellees.

JOINT APPENDIX

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2915 Hunter Mill Road
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Oakton, Virginia 22124

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TAYLOR, CLEMENTE & BROCK
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Counsel for Appellees

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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PETITION FOR TEMPORARY AND
PERMANENT INJUNCTION

Filed in the Clerk's Office this 17 day of JAN 1980
500
100
2500
3100
Clerk
D. C.

COMES NOW your Petitioners, Albert B. Lipps and Judith W. Lipps, his wife, and Sandmar Associates, Inc., a Virginia Corporation, by Mary Sherman, President, and file this their Petition for Temporary and Permanent Injunction, and in support thereof state as follows:

1. Albert B. Lipps and Judith W. Lipps, his wife, are the record owners of Lot 35, Section 1, Irongate (as duly platted, dedicated and recorded in Deed Book 435 page 304 of the land records of Prince William County, Virginia), by virtue of a deed recorded in Deed Book 858 page 485 of said land records.

2. At the time of acquiring the property, Mr. and Mrs. Lipps executed a purchase money note in the amount of $31,550.00 and further executed a deed of trust on their property to secure the note. Said deed of trust, which is improperly acknowledged, is recorded in Deed Book 858 page 487 of the said land records. (Exhibit A attached).

3. First American Savings and Loan Association, a Virginia corporation, is the lending institution which made the loan (#L-1684-2) to Mr. and Mrs. Lipps evidenced by the said note.

4. First American Service Corporation, a Virginia corporation, is the Trustee of the said deed of trust.

5. Monthly payments have been made regularly on the said note since its inception, July 27, 1976.

6. Sandmar Associates, Inc., a Virginia corporation, is the contract

purchaser of the aforesaid property under a Land Contract dated April 21, 1979, and recorded May 14, 1979 in Deed Book 1078 page 457 of the said land records. (Exhibit B attached).

7. Pursuant to said contract, Sandmar Associates, Inc. has made prompt monthly payments on the said note, commencing May 1, 1979.

8. In November, 1979, First American Savings and Loan Association made several telephone calls to Complainants as well as to their attorney, regarding the loan and the land contract.

9. By letter of November 18, 1979, to Mr. and Mrs. Lipps, James H. Harrison, Executive Vice-president of First American Savings and Loan Assn. called the loan, asking for full payment by December 31, 1979, for the stated reason that "the above referenced property has been transferred to Sandmar Associates, Inc. without our approval".

10. By letter of November 21, 1979, to Mr. and Mrs. Lipps and to Sandmar Associates, Inc., Richard R. Nageotte, attorney for First American Savings and Loan Assn. placed the complainants upon formal legal notice that the loan was accelerated pursuant to Par. 17 of the deed of trust as a result of the recorded land contract, which they considered a breach of Par. 17 of the deed of trust. The letter further gave notice that foreclosure proceedings would be instituted if full payment was not made by December 31, 1979.

11. By check dated December 4, 1979, Sandmar Associates, Inc. attempted to make the December 1979 payment on the said note, which payment was refused by the lender and the check returned to the maker.

12. By letter of January 7, 1980, to Complainants, from Richard R. Nageotte, attorney, Notice of Trustee's Sale of the property was provided. (Exhibit C attached). Trustee under the deed of trust has advertised the property for sale on January 28, 1980, in front of the General District Court doors, Prince William County, Virginia.

13. Complainants deny that the recorded land contract is a breach of Par. 17 of the deed of trust and are of the opinion that the land contract agreement does not constitute a conveyance of the property.

14. Further, Mr. and Mrs. Lipps are of the opinion that they have an inalienable right to contract to sell their property to whomsoever they please and in any manner they see fit, so long as the timely payments are made to the lender or its assignees and the security interest is not depreciated.

15. Complainants allege that the sole purpose of the foreclosure is to secure premature payment of the loan and for the personal gain of the lender, and not to protect the security thereof, and that the foreclosure would render irreparable injury to the property rights of Complainants and constitute a blight on their credit records.

16. Prior to the land contract between Mr. and Mrs. Lipps and Sandmar Associates, Inc., the Lipps had had several real estate contracts for sale on the said property subject to the purchaser assuming the said deed of trust, and that in each instance the First American Savings and Loan Assn. had refused to allow the assumption for reasons known only to themselves.

17. The Courts of Virginia have since colonial times considered land to be unique, and the Complainants have therefore no remedy at law, and seek the equity allowed by Chancery proceedings, to deter irreparable harm to themselves.

WHEREFORE, your Complainants respectfully pray that First American Service Corporation, Trustee, be enjoined from selling Lot 35, Section 1, Irongate, pursuant to the powers conferred on them by the deed of trust securing the loan of First American Savings and Loan Assn., until this cause can be tried on its merits; and that in the interim period, First American Savings and Loan Assn. be ordered to accept monthly payments on the loan; and for such other and further equitable relief as this Court shall deem just and appropriate.

Albert B. Lipps

Judith W. Lipps 1/11/80

Judith W. Lipps

SANDMAR ASSOCIATES, INC.

By: Mary Sherman

Mary Sherman, President

Robert E. Swan

Robert E. Swan, Attorney
Counsel for Complainants
10604 Warwick Avenue
Fairfax, Virginia 22030

DEMURRER

COME NOW First American Service Corporation and First American Savings & Loan Association, by counsel, as and for their response to the petition for temporary and permanent injunction respectfully state to the Court that the said petition fails to state a cause of action upon which the relief requested may be granted. The grounds for this Demurrer are as follows:

1. Pursuant to Paragraph 6 of the said petition and to Exhibit "B" attached to the said petition, it is alleged that the Contract of Sale is recorded at Deed Book 1078, Page 457 among the land records of Prince William County.

2. Virginia Code Section 55-95 provides that, as to creditors, the recordation of such a land contract is in legal effect a Deed.

3. Paragraph 17 of the Deed of Trust referred to in Paragraph 2 of the petition, which Deed of Trust is recorded at Deed Book 858, Page 487, provides, in part, that if all or any part of the secured property is sold or transferred without lender's prior consent, lender may, at lender's option, accelerate the note secured by the Deed of Trust, provided it gives not less than 30 days notice of such acceleration.

4. Pursuant to Paragraphs 9 and 10 of the petition herein, the petitioners acknowledge that more than 30 days notice was given of this exercise of the lender's option to accelerate the note.

5. In accordance with the foregoing, even if all facts alleged are admitted to be true, the petitioners are not entitled to the relief prayed for.

FIRST AMERICAN SERVICE CORPORATION
FIRST AMERICAN SAVINGS & LOAN ASSOCIATION

BY COUNSEL

Filed January 23 1985
Prince William County, Va.
Deputy Clerk

DANIEL H. BORINSKY
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of January, 1980, delivered a copy of this Memorandum and Demurrer to Robert Swann, Counsel for the Petitioners herein.

DANIEL H. BORINSKY

DECREE GRANTING TEMPORARY INJUNCTION

THIS CAUSE came on to be heard this 23rd day of January, 1980 upon the Petition for Temporary and Permanent Injunction heretofore filed in this cause and the Demurrer heretofore filed in this cause and was argued by Counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that Plaintiff is entitled to a temporary injunction, it is hereby

ADJUDGED ORDERED AND DECREED that Defendants be, and they are, hereby restrained and enjoined from proceeding to the foreclosure sale which is the subject of the petition for temporary injunction for the period set out in this Order or until further order of this Court, whichever shall first occur.

This injunction order shall be effective from the 23rd day of January, 1980, the date of this order, until the 27th day of January 1980, at which time it shall stand dissolved unless prior thereto it shall have been enlarged or a further injunction shall have been granted by further order of this Court; but this order shall not become effective until plaintiff shall enter into Bond before the Clerk of this Court the sum of $2,000.00 conditioned according to law. by January 25, 1980, at close of business

AND THIS CAUSE IS CONTINUED.

ENTERED this 23rd day of January, 1980.

Perry Thomas Jr.
JUDGE
Circuit Court of Prince William County

I ASK FOR THIS:

ROBERT E. SWAN
10604 Warwick Avenue
Fairfax, Virginia 22030
Counsel for Plaintiff

SEEN AND EXCEPTED TO:

RICHARD R. NAGEOTTE
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Counsel for Defendants

DEFENDANT'S TRIAL MEMORANDUM

FACTS

There is no dispute as to the material facts of this case, which are as follows: On July 27, 1976, the Petitioners, Albert B. Lipps and Judith W. Lipps, husband and wife, entered into a standard FNMA/FHLMC purchase money Deed of Trust encumbering a single family dwelling to secure a note payable to First American Savings & Loan Association in the principal amount of $31,550.00. That purchase money Deed of Trust is recorded in the Prince William County Land Records at Deed Book 858, Page 487, and provides in paragraph 17 as follows:

> If all or any part of the property or an interest therein is sold or transferred by borrower without lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise descent or operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to the purchase, lender may, at lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. (emphasis added).

Mr. and Mrs. Lipps entered into a "land contract for sale of improved real property - Virginia", on the 21st day of April, 1979. That land contract is recorded among the land records of Prince William County at Deed Book 1078, Page 457. In the Fall of 1979, promptly upon discovering the transfer, by virtue of several letters described in Paragraphs 9 and 10 of the petition herein, the lender, First American Savings and Loan Association, gave timely and proper notice to the petitioners that it was exercising its paragraph 17 Deed of Trust rights to accelerate the payment of the note based upon the aforesaid recorded land contract.

The loan was not paid within the time prescribed by the lender as aforesaid. Accordingly, pursuant to applicable Virginia law, all required notices were mailed to the borrowers and the property was advertised for a

Prince William County, Va.
Filed February 27 1980
Deputy Clerk

foreclosure on Monday, January 28, 1980, at 10:30 A.M. On January 17, 1980, the Petitioners filed their pleadings seeking a preliminary injunction. A hearing was held on January 23, 1980, at which time a preliminary injunction was entered staying the foreclosure pending a hearing on the merits today.

At all times relevant hereto, First American Savings and Loan Assocition's operations and practices were regulated by the Federal Home Loan Bank Board, an agency of the U. S. Government.

I

THE VIRGINIA LEGISLATURE HAS EXPRESSLY SANCTIONED THE EXERCISE OF DUE-ON-SALE CLAUSES, PROVIDED CERTAIN CONDITIONS WITH RESPECT TO NOTICE ARE CONTAINED IN THE DEED OF TRUST; IN THIS CASE ALL SUCH NOTICE CONDITIONS WERE MET. ACCORDINGLY, THE BORROWER IS ESTOPPED TO DENY THE OPERATION OF THIS PROVISION IN HIS DEED OF TRUST.

Virginia Code Section 6.1-330.34 provides as follows:

> MORTGAGE, ETC., TO CONTAIN NOTICE THAT DEBT IS SUBJECT TO CALL OR MODIFICATION ON CONVEYANCE OF PROPERTY. Where any loan is made secured by a mortgage or deed of trust on real property comprised of not more than four family residential dwelling units and the note, or mortgage or deed of trust evidencing such loan contains a provision that the holder of the note secured by such mortgage or deed of trust may accelerate payment of or renegotiate the terms of such loan upon sale or conveyance of the security property or part thereof, then the mortgage or deed of trust shall contain in the body or on the margin thereof a statement, either in capital letters or underlined, which will advise the borrower as follows: "Notice--The debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed."

In conformity with this code section, the Lipps' Deed of Trust contained the precise notice language set forth above. It would be anomalous indeed if this Court refused to allow the Defendant to exercise a right specifically authorized by the Virginia statute and specifically consented to by the Lipps.

Your Defendant has done considerable research into the question before this Court but have failed to locate controlling Virginia case authority

on this issue. (It is suggested that the clear authority for the use of such clauses as contained in Virginia Code Section 6.1-330.34 is directly responsible for the lack of litigation in Virginia on this matter.) However, at least 21 state courts have considered the general validity of due-on-sale clauses. The overwhelming majority of these courts (14) have authorized the exercise of the due-on-sale clause in circumstances such as are before this court. Of the seven states which invalidated due-on-sale clauses in similar circumstances, none referred to the presence of a state statute such as 6.1-330.34, which specifically validates a due-on-sale clause. Accordingly, even absent this statute, the clear weight of authority supports the validity of such a clause. The presence of such a statute makes it inescapable that Virginia, along with the overwhelming majority of other states considering the question, recognizes the validity of a due-on-sale clause in a deed of trust.

II

THE RECORDATION OF THE LAND CONTRACT BETWEEN THE LIPPS AND SANDMAR ASSOCIATES, INC., HAS THE LEGAL EFFECT OF A DEED AND THEREBY TRIGGERS THE LENDER'S RIGHT TO ACCELERATE THE NOTE.

Paragraph 16 of the Deed of Trust provides, in part, that "...if all or any part of the property or an interest therein is sold or transferred by borrower without lender's prior written consent, ...lender may at lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable." It is clear that the borrowers, the Lipps, have sold all of their interest in the secured property to Sandmar Associates, Inc. by virtue of the recorded land contract. Virginia Code Section 55-95 provides, in part, as follows:

> Any such contract or Bill of Sale as is mentioned in Section 11-1 if in writing and signed by the owner of the property, shall, from the time it is duly admitted to record, be as against creditors and purchasers, as valid, so far as it affects real estate, as if the contract were a deed conveying the estate or interest embraced in the contract... (emphasis added)

Pursuant to the aforesaid Code Section and pursuant to the unambiguous language of Paragraph 17 of the subject Deed of Trust, which provides the lender with the right to accelerate the note if all or any part of the property or an interest therein is sold without the lender's consent, it is clear that this act triggered First American Savings and Loan Association's right to accelerate the note in this case.

III

THE FEDERAL HOME LOAN BANK BOARD'S RULES AND REGULATIONS PREEMPT ANY STATE LAW WHICH PURPORTS TO AUTHORIZE ANY VARIANCE FROM THE FEDERAL HOME LOAN BANK BOARD'S DUE ON SALE REGULATIONS; THE APPLICABLE FEDERAL HOME LOAN BANK BOARD'S DUE ON SALE REGULATIONS SPECIFICALLY AUTHORIZE THE ACCELERATION OF A NOTE IN A CASE SUCH AS THAT WHICH IS BEFORE THIS COURT.

Even if this Court found that Virginia law prohibited the use of a due-on-sale clause, the doctrine of federal preemption would preclude the application of such Virginia law to the loan instruments of First American Savings and Loan Association. First American Savings and Loan Association is a federally insured savings and loan association, and, as such, its operations and procedures are comprehensively regulated by the Federal Home Loan Bank Board.

Under Federal Home Loan Bank Board regulations, any federally regulated mortgage or Deed of Trust executed on or after June 8, 1976, (the subject Deed of Trust was executed on July 27, 1976) containing a due on sale clause is construed in accordance with the Federal Home Loan Bank Board policy enumerated at 12 C.F.R. Section 545.6-11. That regulation specifically provides that federally regulated associations, such as First American Savings and Loan Association, shall not be bound by or subject to any state law restricting its exercise of its rights under a due-on-sale clause. Since First American's exercise of the instant due on sale clause

is in accordance with the applicable federal regulation, this State Court is without power to order it to act otherwise.

The federal regulation, which became effective on June 8, 1976, provides:

> A federal association continues to have the power to include, as a matter of contract between it and the borrower, a provision in its loan instruments, whereby the association may, at its option, declare immediately due and payable all of the sums secured by the association's security instrument if all or any part of the real property securing the loan is sold or transferred without the association's prior written consent... exercise by an association of such an acceleration option... shall be governed exclusively by the terms of the contract between the association and the borrower. 12 C.F.R. Section 545.6-11(f). (emphasis supplied)

In Glendale Fed. S & L Assoc. v. Fox, 459 F.Supp. 903 (1978), a federal court considered the applicability of state regulation of the validity and exercisability of "due-on-sale" clauses contained in loan instruments of federally regulated associations executed on or after June 8, 1976.

The Court considered whether the Federal Home Loan Bank Board's regulation of its member organizations generally preempted state involvement. It concluded that federal regulation had completely preempted state regulation in this area and generally:

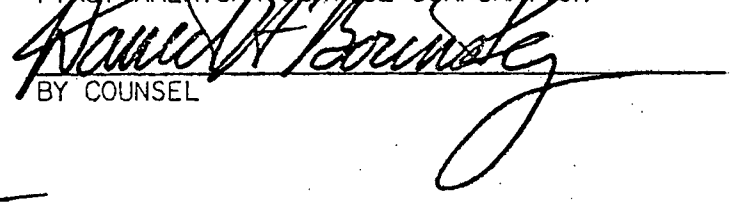
> The language, history, structure, and purpose of the Home Owners' Loan Act evidence a clear Congressional intent to delegate to the Bank Board complete authority to regulate federal savings and loan associations and to preempt state regulation. Whenever the Bank Board, pursuant to that plenary authority, promulgates a regulation governing an aspect of the operation of federal savings and loan associations, that regulation governs exclusively and preempts any attempt by a state to regulate in that area. 459 F.Supp. at 910. (emphasis added)

Responding to attempts by states to impose limitations on federal associations' exercise of due-on-sale clauses, the Board promulgated regulations effective on and after June 8, 1976, preempting all state

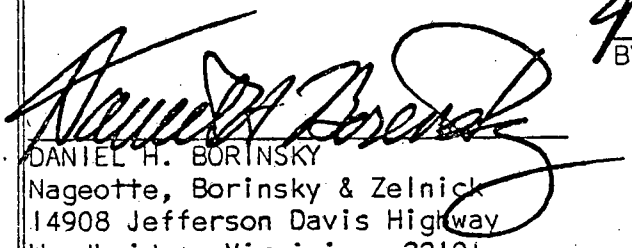
involvement in this area. Those federal regulations specifically authorize First American's exercise of the due-on-sale clause in this case and this Court is barred from interferring with that Federally authorized right.

Accordingly, the Petition for an injunction should be denied.

FIRST AMERICAN SAVINGS AND LOAN ASSOCIATION
FIRST AMERICAN SERVICE CORPORATION



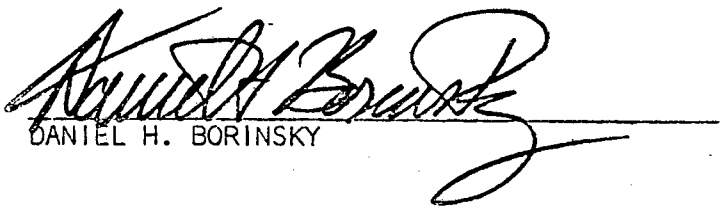
BY COUNSEL



DANIEL H. BORINSKY
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
Counsel for First American Savings
and Loan Association and First
American Service Corporation

CERTIFICATE OF SERVICE

This is to certify that I have this 27th day of February, 1980, delivered a copy of this Memorandum to Robert Swann, Counsel for the Petitioners herein.



DANIEL H. BORINSKY

Responsive Pleading

Comes now First American Service Corporation and First American Savings and Loan Association and as and for their response to the petition filed herein respectfully state as follows:

1. Paragraph one. It is denied that the Lipps are the owners of the subject property. In accordance with Virginia Code Section 55-95, it is asserted that Sandmar Associates is the owner.

2. Paragraph two is admitted, except that it is unknown whether or not the subject deed of trust was improperly acknowledged. Accordingly, the allegation relating to the improper acknowledgement is denied.

3. Paragraphs three and four are admitted.

4. Paragraph five is admitted, except that monthly payments were refused once the note was accelerated.

5. Paragraph six is admitted, except that it is asserted that Virginia Code Section 55-95 makes Sandmar Associates the owner and not the contract purchaser.

6. Paragraph seven is unknown and therefore denied.

7. Paragraphs eight, nine, ten, eleven and twelve are admitted.

8. Paragraphs thirteen, fourteen and seventeen are denied on on the grounds that the allegations therein are incapable of being admitted or denied.

9. Paragraphs fifteen and sixteen are denied.

Wherefore, having fully answered the petition filed herein, your respondants pray that the petition be dismissed and that they be awarded their costs.

Circuit Court Clerk's Office
Prince William County, Va.
Filed February 27 1980
Deio J. Kusk Deputy Clerk

First American Service Corporation
First American Savings and Loan
Association

By: Richard R. Hagerty
Authorized Agent

County of Prince William
State of Virginia

The foregoing was sworn before me this 27th day of February 1980.

Daniel H. Borinsky, Counsel for
Defendants

Certificate

I hereby certify that I delivered a copy of the foregoing to Robert Swann, Counsel for the Petitioners, this 27th day of February 1980.

Daniel H. Borinsky

THIRTY-FIRST JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
CITIES OF MANASSAS AND MANASSAS PARK

March 6, 1980

ARTHUR W. SINCLAIR
PERCY THORNTON, JR.
JUDGES

CIRCUIT COURT CHAMBERS
9302 PEABODY STREET
MANASSAS, VIRGINIA 22110

ROBERT E. SWAN, Esquire
Attorney at Law
10604 Warwick Avenue
Fairfax, Virginia 22030

DANIEL H. BORINSKY, Esquire
Attorney at Law
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191

RE: Albert B. Lipps and Sandmar Associates, Inc.
vs.
First American Service Corp., et al
Chancery No. 13246

Dear Counsel:

After due consideration of the evidence, memorandums and arguments in the subject case, I am of the opinion that the "due on clause" as stated in Paragraph 17 of the deed of trust involved is legal; such provision is in accordance with the statutes of Virginia as well as the applicable federal law.

Further, I find that the complainants have breached such provision by the execution and recordation of the land contract, Exhibit No. 1, without consent of the defendant, First American Savings and Loan Association, and thereby invoked, at the option of such lender, the acceleration of payment of balance due on the note secured by the deed of trust.

Accordingly, the temporary injunction granted by this court on January 25, 1980 is dissolved; permanent injunction sought by the complainants is denied.

Mr. Borinsky is requested to prepare an order in accordance with this decision and likewise submit cost incurred by the defendants as the result of the temporary injunction, to be paid from the bond of $2,000 posted by the complainants.

Sincerely yours,

PERCY THORNTON, JR.

PTJr.:dra

DECREE DENYING INJUNCTIVE RELIEF

THIS CAUSE came to be heard upon the petition and answer, the testimony heard ore tenus, the exhibits introduced at the hearings, and upon the argument of counsel and memoranda of the parties submitted on behalf of the complainants and defendants. Upon consideration all of which, this Court finds as follows:

1. That the "due on sale clause" as stated in Paragraph 17 of the Deed of Trust filed among the papers in this case is legal and enforceable and is in accordance with the statutes of Virginia. That further the "due on sale clause" does not violate any applicable Federal Law.
2. That the complainants have breached this provision of the herein involved Deed of Trust by the execution and recordation of a Land Sales Contract, without the consent of the Defendant, First American Savings and Loan Association, and thereby invoked at the option of the lender the right to accelerate the payment of the balance due on the Note secured by the said Deed of Trust.

It is accordingly, ORDERED, ADJUDGED and DECREED that the prayer for a permanent injunction herein sought by the complainants be and hereby is denied. Complainants shall within 21 days from the entry of this order file with this court any damages which complainants allege should be paid from the bond heretofore posted with this court by the Defendants.

ENTERED THIS 19th DAY OF MARCH, 1980.

AND THIS ORDER IS FINAL AND THIS CASE REMOVED FROM THE ACTIVE DOCKET OF THIS COURT.

Percy Thornton, Jr., Judge
Prince William County Circuit Court

I ASK FOR THIS:

DANIEL H. BORINSKY
Counsel for the Defendants

SEEN: and objected to

ROBERT E. SWAN
Counsel for the Complainants

800908

CLERK
SUPREME COURT OF VIRGINIA
RECEIVED
JUN 17 1980
RICHMOND, VIRGINIA

V I R G I N I A: IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

ALBERT B. LIPPS, et al,

Complainants

v. CHANCERY NO. 13246

FIRST AMERICAN SERVICE CORP., et al,

Defendants

COMPLAINANTS MEMORANDUM OF LAW

Robert E. Swan, Esquire
10604 Warwick Avenue
Fairfax, Virginia 22030

FACTS

On April 21, 1979, Albert and Judith Lipps entered into a land contract for sale of improved real property in Virginia with Sandmar Associates, Inc., a Virginia corporation, for the sale of Lot 35, Section 1, Irongate, Prince William County, Virginia, owned and occupied by the Lipps.

The Lipps had purchased the property (a townhouse) in July, 1977, with a small down payment and a loan from First American Savings and Loan Association of $31,500.00. The Deed of Trust securing the loan was a FNMA-FHLMC uniform instrument and Paragraph 17 of the trust contains a due-on or non-assumption cluase providing that "if any part of the property or an interest therein is sold or transferred by Borrower without lender's prior written consent . . . . the lender may, at lender's option, declare all sums secured by this deed of trust to be immediately due and payable."

The evidence indicates that the Lipps were over-crowded in the small townhouse and desired to purchase a single family detached home. Mr. Lipps is a Prince William County Police Officer and Mrs. Lipps is a laboratory technician at Prince William County Hospital. They have three small children.

For a period of ten months prior to entering the land contract with Sandmar Associates, the Lipps had unsuccessfully tried to sell the Irongate townhouse and had listed it successively with several different realtors. Mr. Lipps had consulted the lender concerning prospective purchasers and in each case either the purchaser was disapproved or the lender demanded increase of the interest rate.

Following the execution of the land contract between Lipps and

Sandmar Associates, Inc., payments were made directly to the lender by Sandmar Associates, Inc. on their own printed checks from May through October, 1979, at which time the lender called the note and has refused subsequent timely payments. The lender initiated foreclosure proceedings which were enjoined by this court on January 22, 1980. The lender at no time has alleged either late payments or impairment of security.

QUESTIONS RAISED

1. Is the land contract executed and recorded between Lipps and Sandmar Associates, Inc. in violation of the "due-on" clause set forth in Paragraph 17 of the FNMA-FHLMC uniform instrument (deed of trust) ?

2. Is the exercise of the "due-on" clause (foreclosure) an unreasonable restraint on alienation and/or inequitable as against public policy under the facts of this case where there is no demonstrated impairment of lender's security or risk of non-payment?

GENERAL STATEMENT

The "due on sale or transfer" and the "due on encumbrance" clauses appeared in deeds of trust and mortgages on a quantity

basis during the 1960's in California and spread rapidly to other areas. They are common now in most states. In Virginia, the "due on encumbrance" clause has been invalidated by statute. The purpose of these clauses was to restrain the sale or transfer of property to a purchaser of whom the lender had no knowledge and therefore might suffer impairment of security or risk of non-payment.

During the same period of time the same lenders commenced making 90% and 95% loans (previously restricted pretty much to FHA and VA loans) which presently are frequently referred to as "magic" loans, wherein private insurance companies insure repayment of the top 20%± of the loan to the lender. The premium for this type of insurance, of course, was charged to the borrower as a cost of financing his new home.

An additional factor complicating this economic triangle (Bank-Borrower-Seller) has been the "points structure" which came into existence after World War II (a "point" being defined as 1% of the new loan). While the point structure to the borrower has generally been restricted to 1%, the number of points chargeable to the seller has thus far remained unlimited, has frequently been as high as 8% to 10% and presently is quoted at 14%. The "points" are paid to the lender.

It follows that despite inflation of real estate values, many home owners who purchased with 5% down on their homes are now faced with charges of as much as 20% of the homes value in order to sell (14 points plus a 6% real estate commission). Considering the transient nature of the Northern Virginia area, it is no wonder that

home owners here (and apparently elsewhereas well) have commenced looking for other forms of transfer of their property. One of these methods is the use of the land sales contract, which has been around for a long time in most jurisdictions. Such a contract furnished the seller with his equity, with no title transfer until the loan in question was fully paid by installments or the property refinanced to a successive buyer.

The lenders, on the other hand, because of the inflation and rising interest rates have now looked to the due-on clause as a means of keeping their loan portfolios at the highest possible interest rates. Thus the due-on clause, originally conceived and historically used to protect the lender's security, has become a means to raise interest rates on loans and to collect additional fees through forcing refinancing of property.

We find that the issues raised here have not been considered by the Virginia Supreme Court. Furthermore, decisions of other jurisdictions respecting the questions and issues not all in agreement. Many decisions do support the position we seek this Court to take, and the following memorandum of law is submitted in behalf of our position that the contemplated foreclosure be permanently enjoined.

THE EXERCISE OF THE 'DUE ON SALE' CLAUSE IS INVALID AND SHOULD NOT BE ENFORCED UNDER THE FACTS OF THIS CASE BECAUSE (a) IT IS AN UNREASONABLE RESTRAINT ON ALIENATION, and (b) IT IS AGAINST PUBLIC POLICY.

One of the first cases to rule on validity of the modern "due on sale" clause was the case of Coast Bank v. Minderhout, 61 Cal. 2d 311, 38 Cal. Rptr. 505, 392 P.2d 265 (1964). There the plaintiff Coast Bank had made several home improvement loans to Donald and Burton Enright, who executed a note for the full amount. The "due on sale" provision was actually contained in a separate instrument, by which the Enrights promised not to sell or encumber the property until they had satisfied their obligation. They then sold the property to the Minderhouts, upon which the bank attempted to foreclose on the property, asserting an equitable mortgage created by the promise not to sell or encumber. The appellate court reversed a trial court's foreclosure decree, stating that the document was a direct restraint on alienation and therefore void. The California Supreme Court reversed the decision of the appellate court and found that "reasonable restraints" were permissible. The Court held:

> A restraint on alienation in an executory land contract has been upheld because of the vendor's interest in the upkeep of the property and in the character and integrity of the purchaser..... ...Accordingly plaintiff validly provided that it might accelerate the due date if the Enrights encumbered or transferred the property.

From this decision, subsequent California cases have moved to the point today, where the court has stated in Wellenkamp v. Bank of America 582 P2d 970 (1978), that a

> ...due on clause contained in a promissory note or deed of trust cannot be enforced upon the occurrence of an outright sale unless the lender

> can demonstrate that enforcement is reasonably necessary to protect against impairment to its security or the risk of default.

To arrive at this point, the California court considered several cases. La Sala v. American Savings and Loan Association 489 P2d 1113 (1971) considered "due on encumbrance" clauses and their effect on alienation. The inclusion of the "due on encumbrance" clauses in deeds of trust had followed closely the development and inclusion of the "due on sale" clauses, and forbade the borrower-owner from placing a second trust on his property without first exacting approval (usually at some cost to him) from the first trust holder. The court found that "due on encumbrance" clauses would be unenforceable unless the lender could show some impairment to his security. The La Sala court further stated:

> In any event, a restraint on alienation cannot be found reasonable merely because it is commercially beneficial to the restrainor. Otherwise one could justify any restraint on alienation upon the ground that the lender could exact a valuable consideration in return for its waiver, and that sensible lenders find such devices profitable.

The issue of enforceability of the "due on encumbrance" clause is mentioned here to show the continuing manner and direction lenders have attempted to go in restraining alienation of property. Fortunately, in Virginia, this type of restraint is now prohibited by statute. V.C.A. Par. 6.1-2.5 (1975).

The La Sala case is also relevant because it paved the way for Tucker v. Lassen Savings and Loan Association 526 P2d 1169 (1974). The Tucker case is precisely in point to the facts and transaction in our present case. The Plaintiff, Tucker, purchased a parcel of land for $11,400, making a down payment of $4,000 and financing the rest through a note given to Lassen Savings and Loan, which

note contained a "due on sale" clause as well as a "due on encumbrance" clause. Subsequently, Tuckers entered into an installment land contract with their tenants, the Nolls, to whom the premises had been rented shortly after the Tuckers purchased the property. Upon learning of the installment contract, Lassen demanded payment of the unpaid balance and $230 in prepayment charges. The Tuckers could not pay this amount and Lassen initiated foreclosure proceedings which were never completed because the Tuckers' vendees, the Nolls, agreed to assume the loan at a rate of 9.25 per cent per annum. (The Tuckers had paid 7.5 per cent per annum.) The Tuckers brought suit for damages, alleging an unreasonable restraint on alienation. After quoting the above decision from La Sala, the court went on to say:

> The automatic enforcement of a "due-on" clause in instances where the trustor-obligor has entered into an installment land contract to sell the secured property would result in a restraint on alienation of very considerable proportions. In fact it is clear that such enforcement would operate to virtually eliminate alienation by installment land contract in all situations where the property to be conveyed was subject to a deed of trust and the obligation under the note remained substantial. .....The trustor-vendor normally receives a relatively small down payment upon execution of the contract, the remainder of the purchase price to be paid through monthly installments..... The result is that a conveyance by means of an installment land contract would essentially be precluded in all cases wherein the balance due on the trustor-vendor's note was substantial if the "due-on" clause were to be given automatic effect. Accordingly, although the trustor-vendor might be willing to accept a rate of interest lower than that currently offered by institutional lenders, the prospective purchaser would be compelled to resort to such lenders to finance the acquisition of the property. The result in terms of a restraint on alienation is clear.

The court did not declare such clauses invalid, and we are not

asking the court to do that here. Under Tucker, a "due on sale" clause would be enforced where the party in possession of the property was conducting itself in a manner conducive to waste, or where the purchaser could be shown to be likely to default. But, in a footnote, the court made the following emphasis:

> We reject the suggestion that a lender's interest in maintaining its portfolio at current interest rates justifies the restraint imposed by the exercise of a "due-on" clause upon the execution of an installment land contract.

In Wellenkamp, Supra (1978), the California court again rejected the contention that the lender's interest in maintaining its loan portfolio at current interest rates justified foreclosure. As noted before, the court further held that the "due-on" clause, whether in land contracts or in assumption deeds, was a restraint on alienation.

Wellenkamp also addressed an argument similar to that which may be raised in the instant case by reference to the Virginia notice statute, V.C.A. Par. 6.1-330.34, the California court stating:

> Defendant argues that even if the due-on clause contained in the deed of trust were held not to be automatically enforceable because it constitutes an unreasonable restraint on alienation, inclusion of the due-on clause in the promissory note, as required by Civil Code section 2924.5 for property containing four or fewer residential units, would make that clause part of the debt itself and therefore automatically enforceable on that basis. It is clear that the purpose of Civil Code section 2924.5 is to provide notice to the borrower; it cannot be reasonably interpreted in the manner that defendant suggests.

In reaching its decision, the Wellenkamp court overruled to the extend inconsistent Coast Bank v. Minderhout, supra. California has therefore moved from its initial position in the Coast Bank

case to the present concept that the exercise of "due-on" clauses will not be allowed where property has been sold or transferred by either land contract or assumption deed unless the lender has shown impairment of security or risk of non-payment.

In Arizona, in Baltimore Life Insurance Co. v. Harn, 15 Ariz. App. 78, 486 P.2d 190 (1971), the mortgagee attempted to exercise a due-on-sale clause by foreclosing after the mortgagor had executed an agreement to sell the premises. The Court determined that the agreement to sell constituted a conveyance within the scope of the due-on-sale clause. However, the court refused to permit enforcement of the clause simply upon the allegation that the clause had been violated. The court emphasized that:

> the complaint contained no allegation that there had been any default in payments as they became due and at oral argument counsel for the plaintiffs, responding to a question directed to this point, affirmed that there had been no missed payments. At no place in the pleading does an allegation appear that the plaintiff's security is in any way jeopardized.

The court concluded that in the absence of "an allegation that the purpose of the clause . . . is being circumvented or that the mortgagee's security is jeopardized, a [mortgagee] cannot be entitled to equitable relief." 486 P.2d at 193.

The Harn case was followed by Patton v. First Federal Savings and Loan Association of Phoenix, 118 Ariz. 473, 578 P.2d 152 (1978), where the operative facts were in point to our present controversy:

> Mrs. Patton entered into an agreement of sale with a Mr. Toy. The agreement stated that the First Federal loan was to remain Mrs. Patton's obligation and that she would pay off this loan before Toy had made the last payment due under the agreement. The property would not be deeded to Toy until he had paid the entire balance due under the agreement. Shortly

> after this transaction with Toy, First Federal informed Mrs. Patton that . . . First Federal would force Mrs. Patton to pay off the entire balance of the loan under the "due on sale" provision of the Trust Deed.

The Court went on to say, in this Arizona case:

> The facts before us are very similar to the facts in Tucker v. Lassen Savings and Loan Association, 12 Cal.3d 629, 116 Cal.Rptr. 633, 526 P.2d 1169 (1974). The effect of the "due on sale" clause in this case and in Tucker are exactly the same; both clauses make it very difficult for a person to convey property subject to a Deed of Trust regardless of whether the contemplated transfer lessens the lender's security. Therefore, we follow the reasoning of the Tucker court and hold that the "due on sale" clause cannot be enforced unless First Federal can show that its security is jeopardized by the transfer of the subject property without First Federal's consent; enforcement of the clause without such showing is an unlawful restraint on alienation.

In our instant case, there has been no indication that mortgagee's security has been jeopardized in any way or that any payments have been missed. Thus, the principles set forth in the above cited cases are directly applicable.

In other jurisdictions which have considered cases involving "due on sale" language, some "confusion currently marks the area." Comment, "Judicial Treatment of the Due-on-Sale Clause: The Case for Adopting Standards of Reasonableness and Unconscionability," 27 Stan. L. Rev. 1109, 1117 (1975). However, there exists a broad category of cases which holds that while such clauses might be reasonable in individual cases, the burden will be on the mortgagee to establish that enforcement in a particular case is justified.

> They tend to reject the interest market justification for due-on-sale clauses and emphasize that the mortgagee must establish in the individual case that the transfer threatens to impair security or, at least, increases the chances of default and foreclosure.

Osborne, Nelson and Whitman, Real Estate Finance Law, Par. 5.23 at 394 (1979).

The category of cases denying enforceability of due-on-sale clauses also includes the following: In Sanders v. Hicks, 317 So. 2d 61 (Miss. 1975), a mortgagor's grantee sought an injunction against a trustee to prevent foreclosure of a deed of trust. The Mississippi Supreme Court, sitting en banc, declared:

> After reviewing some of the considerable volume of current literature on the subject and the cases from other jurisdictions decided since mortgagees began imposing restraints [sic] on alienation on borrowers, we hold that such restraints [sic] are not per se invalid, and that such a restraint may be valid, depending upon whether it is reasonable under the circumstances. . . .
>
> We hold that the restraint on alienation in the deed of trust involved in this case, which has no relation to any threat to the legitimate interests of the mortgagee, is invalid. As to what would constitute a threat to a mortgagee's legitimate interest is not before us; the development of the law in this respect must abide future cases.

And again, in Tucker v. Pulaski Federal Savings and Loan Association, 252 Ark. 849, 481 S.W.2d 725 (1972), property was sold even though the mortgagee refused to approve the purchasers. The mortgagee invoked the acceleration clause and prevailed in the trial court. On appeal the Arkansas Supreme Court reversed the trial court, determining that the mortgagee's objections to the purchasers were unreasonable. Then it added, after quoting extensively from the Baltimore Life Insurance Company case, supra.:

> Of course, we can certainly see why a mortgagee would object to some transfers; a mortgagor, if permitted could sell his equity in property and transfer the indebtedness to a person who had been convicted of operating a bawdy house, operating a gambling house, or illegally selling whiskey or drugs. . . an individual who persistently had failed to pay his obligations, who was without a job, or who had a record of permitting property to deteriorate.
>
> On the other hand, and this frequently happens,

> a mortgagor could be transferred from his job to another location and, if persons to whom he desired to sell the property could be arbitrarily disapproved by the loan company, he could be in the position of being forced to sell to someone at great sacrifice. This could well be true even though a loan might be three-fourths paid. The validity of such a requirement would leave a mortgagor much at the mercy of the mortgagee.

This comes very close to home when we consider the highly transient nature of our suburban Northern Virginia area, and even more to the point when we consider the efforts made by the Lipps to convey their property. In this Arkansas case, the Supreme Court concluded that the mortgagee "cannot, simply on the basis of the quoted clause accelerate the note, declare the indebtedness due and payable, and foreclose the property. This procedure cannot be countenanced in a court of equity." 481 S.W.2d at 729.

Cases supporting our position are not restricted to the West and the South. In Nichols v. Ann Arbor Federal Savings and Loan Association, 250 N.W.2d 804 (1977) (leave to appeal denied), the court held that a due-on-sale provision could not be enforced as against a sale by installment land contract, (the present case at bar) where there was no allegation by defendant that the security was being subject to waste. The court adopted a restraint on alienation rationale, saying:

> Michigan has adopted a flexible approach in the area of restraints; a restraint on alienation will not be enforced unless it is found to be reasonable in a particular case.

Inasmuch as Virginia applies a "reasonableness" test concerning restraints, see Carneal v. Kendig, 196 Va. at 609-10, an approach to "due-on-sale" clauses similar to that adopted by the California and Michigan courts is proper. In Virginia, the general rule is

and has been for many years that reasonable restraints on alienation are allowable, but an absolute and unqualified restraint as to estates generally, whether legal or equitable is inadmissible. Camp V. Cleary 76 Va. 140 (1882). The Virginia Supreme Court reiterated this same view in Carneal v. Kendig, 85 SE 2d 235 (1955), saying:

> "* * * The right of alienation is an inherent and inseparable quality of an estate in fee simple. In a devise of land in fee simple, therefore, a condition against all alienation is void, because repugnant to the estate devised." White v. White, 108 W. Va. 128, 131, 150 S.E. 531, quoting from Potter V. Couch, 141 U.S. 296, 11 S. Ct. 1005, 1010, 35 L. ed. 721. Mandlebaum v. McDonell, 29 Mich. 78, 18 Am. Rep. 61.
>
> "It is frequently said that a reasonable restraint on alienation is valid. Obviously, there can be no adequate general test of reasonableness in this connection. The basis for decision would seem to be whether, in the individual case, the policy in support of free alienation on the one hand outweighs on the other the policy to carry out the wishes of the grantor or testator. In connection with the determination of this question there must be considered also the favor or disfavor which the limitation under scrutiny has in the law. * * *" 1 Minor, Real Property, (2d ed.) Par. 555. Camp v. Cleary, 76 Va. 140.

Tucker v. Pulaski Federal Savings and Loan Association, supra, and Baltimore Life Insurance Co. v. Harn, supra, did not utilize a "restraint on alienation" rationale. They did, however, clearly establish that it would be inequitable to allow acceleration absent harm to the security interest. Under either rationale, the mortgagee in the present case should not be allowed to accelerate and foreclose absent a showing that its security interest is in jeopardy.

In the present case here, since there has been no impairment to security, the sole reason to foreclose appears to be for the

resulting economic advantage to the lender. After receiving two points at the inception of the present loan, by demanding full payment now ($38,800) the lender can reap an additional eight to ten points in today's market based on a new loan of $37,000 by the investment of only the difference of $6,200. We believe such a course of action to be contrary to public policy and objectionable to a court of equity as a forfeiture.

For additional cases placing the burden on the mortgagee to establish that enforcement of such clauses is justified, see Bellingham First Federal Savings and Loan Association v. Garrison 87 Wash. 2d 437, 553 P.2d 1090 (1976); First Southtern Federal Savings & Loan Association of Mobile v. Britton, 345 So. 2d 300 (Ala. Civ. App. 1977); Clark v. Lachenmeier, 237 So. 2d 583 (Fla. App. 1970); and Continental Federal Savings & Loan Association v. Fetter 564 P.2d 1013, 1019 (Okla. 1977).

Other courts have decided the issues presented here differently. See Century Federal Savings & Loan Association of Bridgeton v. Van Glohn, 364 A.2d 558 (N.J. 1976). This case and others cited in it do not discuss the realism of the exorbitant costs of selling and refinancing. Certain other courts, although frequently cited with the Century case above, feel that the equities between seller and lender "should be balanced by the trial court" before allowing exercise of the due-on clause. Mutual Federal Savings and Loan Association v. Wisconsin Wire Works, 205 N.W. 2d 762 (1973) and 239 N.W. 2d (1976).

The Court's attention is also called to the recent Federal

Case, Glendale Federal Savings & Loan Association v. Fox, 459 Fed. Supp. 903 (1978) wherein the court, under the Doctrine of Federal Pre-emption denied the right of the state of California to prescribe contents of Deeds of Trust used by Federal Savings & Loan Associations. The Home Owners Loan Bank Board has now promulgated regulations to provide for due-on clauses in deeds of trust (1976) and for encouraging, if not forcing, the exercise of these clauses by the Savings and Loan Associations under its control. Ironically, the same court quoted the preamble of the Home Owner Loan Act:

> To provide emergency relief with respect to home mortgages indebtedness, to refinance home mortgages, to extend relief to the owners of homes occupied by them and who are unable to amortize their debts elsewhere. . . . . Preamble to HOLA,48 Stat 128 (1933)

The contradiction between the preamble of the Home Owners Loan Act and the regulations (1976) encouraging and sanctioning Federal Savings and Loan Associations to exercise the due-on clause is apparent, and such a contradiction ought to be challenged as against public policy. HOLC came into being when and because "40% of our homes were in foreclosure" due to the inability of "bread line' victims to pay their mortgages. Low interest rates on homes (the only justification given by the courts for exercising the due-on clauses in more recent years) certainly was not the cause of the situation then.

This same contradiction is enhanced by the following current position taken by the Federal National Mortgage Association, co-sponsor of the "uniform instrument" deed of trust used in our present case by the defendant, First American Savings and Loan Association:

> FNMA will not enforce the acceleration-upon-sale provision of the FNMA/FHLMC uniform instrument for conventional mortgages. FNMA Home Mortgage Servicing Contract Sup., Section 406, "Change of Ownership".

The labyrinth of additional costs now involved in the sale of property requiring new financing should be considered. These include new surveys, loan application and appraisal fees, the "point structure" (none prior to 1945---up to 15% of new loan today) and mortgage insurance (none prior to 1960---1% in advance plus 1/12 point per month included in the monthly mortgage payment today). In addition, there are ever encreasing various requirements of many lenders today insisting the borrower do this or that (such as sell his present home prior to financing the new home, thus requiring yet another refinance).

It is further pointed out that the purpose of the present high interest rates is not either aimed or directed at the sale or resale of older property by those within a given area or those entering or leaving the area. The stated aim of the high interest rates has been to control the expanding economy---new construction, etc. It is therefore reasonable to conclude that this current emphasis on refinancing by lenders (the only alternative to straight assumptions or land contracts) with its unusually high costs would tend to accelerate rather than help control the expanding economy, particularly in such a highly transient area as Northern Virginia. Whereas assumptions and land contracts would tend to decelerate the economy as well as benefit seller and purchaser.

It is further noted that VA and FHA deeds of trust do not

include due-on clauses; in fact the VA has established criteria wherein the new grantee may be approved in order that the Veteran/ Seller may re-apply for another VA loan. This encourages assumptions and complements the position that FNMA has taken against enforcement of the due-on clause in conventional financing.

Since Virginia has recognized land sales contracts for many years, and since the use of land contracts would effectively be precluded in all cases where the balance on sellers trust is at all significant, the exercise of the due-on clause in land contracts or otherwise is an unreasonable restraint on alienation, unless the lender can prove impairment to its security through waste or non-payment. The present case is illustrative of just such a situation.

And, furthermore, since the Virginia courts have always abhored forfeitures, foreclosure under the facts of this case is repugnant as against public policy unless the lender can show impairment of its security or risk of non-payment. Neither of these has been shown by the lender.

We therefore urge this Court to find:

1. that the land sales contract in this case is not a conveyance or transfer of title within the meaning of Paragraph 17 of the FNMA-FHLMC uniform instrument herein; or

2. that such a due-on clause constitutes such an unreasonable restraint on the seller's freedom of alienation as to preclude the lender from exercising the due-on clause under the facts of this case; or

3. that foreclosure under the facts of this case is

repugnant to a court of equity as inequitable and against public policy; and therefore

4. that a permanent injunction against foreclosure be granted in this cause.

Respectfully submitted,

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ASSIGNMENTS OF ERROR

1. The Circuit Court Judge erred in denying Plaintiffs' request for a permanent injunction enjoining the enforcement of a due-on-sale clause in a deed of trust where there was no risk of non-payment nor evidence of impairment of security.

2. The Circuit Court Judge erred in finding that the provisions of Paragraph 17 of the deed of trust, under the facts presented in this case, were legal and enforceable and in accordance with the Statutes of Virginia, as well as applicable Federal Law.

3. The Circuit Court Judge erred in finding as a matter of law that the execution and recordation of the contract of sale constitutes a breach of Paragraph 17 of the deed of trust.

1 BEEN MATURED OR NOT. ALL WE KNOW IS THAT AS A FACT THEY HAVE
2 BEEN MAKING THE PAYMENTS REGULARLY.
3 THE COURT: WELL, THIS POSES SOME INTERESTING
4 QUESTIONS, IT SEEMS TO ME. YOUR POSITION IS THAT THE
5 SECURITY FOR THIS DEED OF TRUST IS NOT AFFECTED, AS I UNDER-
6 STAND YOUR POSITION.
7 MR. SWAN: THAT IS -- YES, SIR.
8 THE COURT: THERE IS NO JEOPARDY ON THE
9 SECURITY.
10 MR. SWAN: THAT IS ABSOLUTELY CORRECT.
11 THE COURT: THEY HAVE A PROVISION IN HERE
12 WHICH IS, SOMEONE REFERRED TO AS THE ACCELERATION CLAUSE
13 IN THE EVENT THAT THERE IS -- IT SAYS, IF ANY OR, IF ALL OR
14 ANY PART OF THE PROPERTY OR AN INTEREST THEREIN IS SOLD OR
15 TRANSFERRED. MR. NAGEOTTE, IT RAISES SEVERAL QUESTIONS IN
16 THE MIND OF THIS COURT. I RECOGNIZE THE BASIC CONTRACT
17 PRINCIPLE THAT PARTIES OR ENTITIES CAN CONTRACT TO DO ANYTHING
18 AS LONG AS IT'S NOT ILLEGAL OR CONTRARY TO PUBLIC POLICY,
19 BUT ISN'T THERE REALLY UNDERLYING A PUBLIC POLICY THAT
20 ENCOURAGES AND PROMOTES EVERYBODY TO GAIN A HOUSE? THIS IS
21 ONE OF THE IDEALS OF THE AMERICAN WAY OF LIFE: THAT EVERYBODY
22 SHOULD HAVE A HOME; AND IT SEEMS TO ME THAT THIS PROVISION,
23 IF IT'S CARRIED TO ITS ULTIMATE EXTREME, AS YOU HAVE DONE IN THIS
24 CASE, RUNS CONTRARY TO THAT PUBLIC POLICY.
25 MR. NAGEOTTE: MAY I BE HEARD, YOUR HONOR?

* * *

PENGAD CO., BAYONNE, N.J. 07002 - FORM 2064

1 PROPERTY TO SOMEONE ELSE, AND YOU DON'T APPROVE OF MY
2 PURCHASER, THEN I AGREE MY NEW PURCHASER WILL OBTAIN A LOAN
3 SOMEWHERE ELSE; WE WILL PAY THIS LOAN OFF. IT HAS NOTHING
4 TO DO WITH ALIENABILITY OF THE PROPERTY, YOUR HONOR. THESE
5 PEOPLE CAN SELL THE PROPERTY ANY TIME THEY WANT WITHOUT ANY
6 APPROVAL OF THE BANK, SUBJECT TO PAYMENT OF THE LOAN.
7 NOW, IT DISTURBS ME TO HEAR THINGS LIKE,
8 THIS IS THE AGE THAT EVERYBODY SHOULD HAVE A HOUSE, AND ALL
9 THAT, BECAUSE I SEE ERODING AWAY THE ABILITY OF THE BUSINESSMAN
10 TO PROTECT HIMSELF. WHEN THIS IS SUFFICIENTLY ERODED AWAY,
11 YOUR HONOR, BY RULINGS OF COURTS -- AND I WOULD POINT OUT TO
12 YOUR HONOR THAT THIS DUE-ON-SALE CLAUSE HAS BEEN ATTACKED
13 IN -- HOW MANY STATES, MR. BORINSKY?
14 MR. BORINSKY: WELL, VIRTUALLY EVERY ONE.
15 MR. NAGEOTTE: VIRTUALLY EVERY STATE IN THE
16 COUNTRY.
17 THE COURT: WELL, HOW HAVE WE AVOIDED IT?
18 MR. NAGEOTTE: WELL, BECAUSE VIRGINIA IS A
19 VERY CONSERVATIVE STATE, YOUR HONOR, AND MOST PEOPLE WOULDN'T
20 EVEN CHALLENGE IT, LET ALONE ANY JUDGE GRANT IT, BECAUSE IT
21 APPEARS...
22 THE COURT: WELL, MAYBE WE'RE GOING TO PLOW
23 SOME NEW FURROWS HERE, MR. NAGEOTTE.
24 MR. NAGEOTTE: WELL, YOUR HONOR, MY ONLY
25 PROBLEM WITH PLOWING NEW FURROWS TODAY IS WE NEVER SEEM TO

* * *

1 THE COURT: NO. I TELL YOU WHAT CONCERNS ME,
2 MR. NAGEOTTE. AGAIN, I'M NOT WORRIED SO MUCH ABOUT THE
3 PROPOSITION OR THE PRINCIPLE OF LAW AS RESTRAINING ALIENATION
4 OF CONVEYANCE OR TRANSFER. I DO HAVE SOME PROBLEMS, THOUGH,
5 WITH THE PROPOSITION THAT THIS COULD POSSIBLY BE TAINTED OR
6 AGAINST PUBLIC POLICY, THAT THERE IS NOTHING BEFORE THIS
7 COURT AT THIS TIME THAT WOULD INDICATE THAT THE SECURITY
8 INVOLVED IS IN JEOPARDY. THE CREDITORS HAVE SIMPLY INVOKED
9 A PROVISION THAT BECAUSE IT HAS BEEN TRANSFERRED, OR AN
10 INTEREST HAS BEEN SOLD OR TRANSFERRED. THIS IS AN AREA THAT
11 GIVES ME SOME CONCERN.
12 MR. NAGEOTTE: I CAN APPRECIATE THAT, YOUR
13 HONOR, BUT LET ME ASK YOUR HONOR IF YOU WOULD AGREE TO ONE
14 MORE THING. WOULD YOU RE-READ PARAGRAPH 17. IT DOESN'T
15 SAY THAT THEY CAN ONLY INVOKE THIS CONTRACTUAL RIGHT IF
16 THE SECURITY IS IMPAIRED. IT DOESN'T SAY THAT.
17 THE COURT: I UNDERSTAND THAT. THAT'S THE
18 AREA THAT BOTHERS ME THE MOST.
19 MR. NAGEOTTE: BUT IF IT DOESN'T SAY THAT,
20 YOUR HONOR, THEN THEY CAN INVOKE IT, AT WILL.
21 THE COURT: YES.
22 MR. NAGEOTTE: AT WILL, YOUR HONOR.
23 THE COURT: AT WILL.
24 MR. NAGEOTTE: AT WILL.
25 THE COURT: THAT'S RIGHT. IT SAYS AT WILL.

* * *

PENGAD CO., BAYONNE, N.J. 07002 • FORM 2084

1 PROPERTY TO HIS YOUNG MARRIED SON AND DAUGHTER-IN-LAW WHO
2 ARE ON WELFARE, AND YOU COULDN'T COLLECT THE PAYMENTS. AND
3 ALL OF THESE THINGS COULD HAPPEN, YOUR HONOR; AND THEN YOU
4 SAY, OH, YOU CAN PROVIDE FOR THAT. YOU PUT IN THERE, WELL
5 YOU CAN'T DO THIS UNLESS THE SECURITY IS IMPAIRED, AND WE
6 WOULD BE IN COURT EVERY DAY. THIS DOCKET WOULD BE SO FULL
7 OF PEOPLE WHO ARE BEING FORECLOSED ON, ARGUING ON THE BASIS
8 THAT THERE HASN'T BEEN A LEGAL DETERMINATION THAT THE SECURITY
9 IS IMPAIRED; SO I'M SAYING, YOUR HONOR, IT'S MY HUMBLE
10 OPINION THAT WE OUGHT TO JUST SQUEEZE THIS CASE OFF, AND I
11 WOULD PREFER TO SEE YOUR HONOR GRANT THE DEMURRER, ENTER THE
12 ORDER, AND LET MR. SWAN TAKE HIS REMEDY TO THE SUPREME
13 COURT, BECAUSE THAT IS THE LAW AS IT NOW STANDS WITHOUT
14 COMMENT OR REFERRALS.
15 BUT IF YOUR HONOR DECIDES OTHERWISE, THEN LET'S
16 JUST GO AHEAD AND SAY THAT YOU'RE GOING TO HOLD THAT CLAUSE,
17 DOES IT IMPAIR THE SECURITY OR DOESN'T IMPAIR SECURITY, OR
18 IT'S VOID AS AGAINST PUBLIC POLICY, OR IT'S AN IMPROPER
19 RESTRICTION ON PROPERTY; AND LET'S GO RIGHT ON DOWN TO THE
20 SUPREME COURT. LET'S SAVE ALL OUR CLIENTS A LOT OF TIME AND
21 MONEY AND ARGUING AND HASSLING; AND IF YOU FIND THAT, WE'LL
22 JUST HAVE TO GO THERE INSTEAD OF MR. SWAN; AND WE'LL GET THE
23 MATTER DECIDED QUICKLY IN VIRGINIA, AND WE WILL HAVE SOME
24 LAW IN VIRGINIA.
25 THE COURT: WELL, HERE'S ANOTHER PHRASE THAT

1 GIVES ME PARTICULAR CONCERN. I, AND AGAIN, OF COURSE, IT'S
2 NOT UP TO THE COURT TO REWRITE CONTRACTS. THE COURT DOES
3 NOT DO THAT. BUT HERE AGAIN, IT COMES AGAIN TO THIS QUESTION
4 OF PUBLIC POLICY, AND THIS PHRASE STANDS OUT TO ME, AND,
5 OF COURSE --
6 THE LENDER SHALL HAVE WAIVED SUCH OPTION TO
7 ACCELERATE IF, PRIOR TO THE SALE OR TRANSFER, THE
8 LENDER AND THE PERSON TO WHOM THE PROPERTY IS TO
9 BE SOLD OR TRANSFERRED, REACH AGREEMENT IN WRITING
10 THAT THE CREDIT OF SUCH PERSON IS SATISFACTORY TO
11 THE LENDER, AND...
12 HERE IS THE CLAUSE THAT:
13 AND THE INTEREST PAYABLE ON THE SUMS SECURED BY
14 THIS DEED OF TRUST SHALL BE AT SUCH RATE AS THE
15 LENDER SHALL REQUEST.
16 MR. NAGEOTTE: THAT'S CORRECT, YOUR HONOR.
17 THAT'S EXACTLY WHAT IT SAYS.
18 THE COURT: I KNOW THAT, MR. NAGEOTTE.
19 MR. NAGEOTTE: AND WHAT THAT SAYS, YOUR
20 HONOR, IS THAT THE LENDER HAS THE RIGHT TO READJUST THE...
21 THE COURT: HAS A RIGHT TO READJUST THE
22 INTEREST...
23 MR. NAGEOTTE: HE HAS A RIGHT TO...
24 THE COURT: ... AND IF THAT'S NOT ACCEPTABLE
25 TO THE PARTIES, IF IT'S CARRIED OUT THEN, THERE IS AN

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THE COURT

MR. NAGEOTTE

1 ACCELERATION.

2 MR. NAGEOTTE: BUT, YOUR HONOR, BEAR IN
3 MIND THAT WHEN THE LENDER BORROWS THE MONEY, SIGNS THE DOCU-
4 MENTS, HE SIGNS AGREEING TO THIS PROVISION. IF YOU HOLD
5 PROVISIONS LIKE THAT VOID, YOUR HONOR, THE LAW OF CONTRACTS
6 WOULD BE IN A TERRIBLE STATE. PEOPLE COULD NOT CONTRACT FOR
7 WHAT THEY WANTED TO CONTRACT FOR. WE WOULD HAVE TO, BEFORE
8 WE MADE ANY CONTRACT, WE WOULD HAVE TO COME TO THE COURT AND
9 SAY, "HOW DOES YOUR HONOR FEEL ABOUT THIS CONTRACT? DO
10 YOU FEEL IT'S ALL RIGHT?" THE LAW GIVES CERTAIN PEOPLE WHO
11 ARE NOT SUFFERING FROM DISABLITY THE RIGHT TO CONTRACT; AND
12 YOU MUST -- YOU CANNOT ASSUME THAT, IF THEY SIGN THE
13 DOCUMENT, THEY DIDN'T KNOW WHAT THEY WERE CONTRACTING FOR;
14 THEY DIDN'T KNOW WHAT THEY WERE AGREEING TO. THE LAW IS
15 THAT IT'S ASSUMED THAT THEY DID. IT'S CLEAR AND UNAMBIGUOUS,
16 AND IF THEY SIGN AGREEING TO THAT, YOUR HONOR, UNLESS THIS
17 COURT IS WILLING TO SAY THAT THAT IS VOID AS AGAINST PUBLIC
18 POLICY, PEOPLE CANNOT CONTRACT TO DO THAT, THEN I THINK WE'RE
19 RIGHT BACK TO SQUARE ONE.

20 I MIGHT POINT OUT TO YOUR HONOR ALSO THAT WE'RE
21 DEALING WITH ANOTHER VERY -- I DIDN'T EVEN WANT TO GET INTO,
22 BECAUSE IT FRIGHTENS ME, BUT IF YOUR HONOR WILL NOTICE, AND
23 MR. SWAN ALLUDED TO IT IN HIS ARGUMENT, THAT IS ON AN
24 APPROVED FNMA FORM. THAT'S THE FEDERAL GOVERNMENT, YOUR
25 HONOR. THAT FORM IS APPROVED, REGULATED BY THE FEDERAL

1 GOVERNMENT; AND WE HAVE THE FEDERAL REGULATIONS HERE WHICH,
2 AND SOME CASES, SOME DECISIONS CONCERNING WHAT OCCURRED IN
3 THE CALIFORNIA CASE. REMEMBER, I SAID IT WAS ONLY ONE
4 CASE IN ONE STATE THAT HAD DECLARED THIS PROVISION VOID,
5 AND THAT WAS CALIFORNIA, AND WHAT HAPPENED IN THAT CASE,
6 YOUR HONOR, AFTER THE CALIFORNIA COURT DID THAT, THE FEDS
7 CAME OUT AND SAID, "THAT'S TOO BAD ABOUT THAT. THIS DOES
8 NOT APPLY. IT'S FEDERAL REGULATIONS." I WOULD SUBMIT TO
9 YOUR HONOR THE FEDERAL REGULATIONS ARE A POINT IN THIS CASE
10 FOR YOU TO LOOK AT, AND THAT IS REGULATION ON SECTION 556.9
11 OF THE FEDERAL REGULATIONS 989, WHICH CALLS FOR CLAUSES OR
12 ALLOW S AND LS THE IMPOSITION OF LATE CHARGES AND DUE-ON-SALE
13 CLAUSES. I'LL GIVE YOUR HONOR THIS FEDERAL REGULATION.
14 I KNOW, WE HAVE THE ANNOTATED LOAN MANUAL,
15 REVISED EDITION, FEDERAL REGULATIONS DISCUSSES THE PROVISIONS
16 THAT MAY BE PLACED IN A CONTRACT WHICH WILL BE APPROVED BY
17 FEDERAL LENDERS, AND THIS I'LL TENDER TO YOUR HONOR AS THE
18 PORTION OF THE ANNOTATED MANUAL WHICH AFFECTS THESE TYPES
19 OF LOANS.
20 I'LL GIVE YOU ALSO, YOUR HONOR, THIS CURRENT
21 DECISIONS OF INTEREST, FEDERAL HOME LOAN BANK BOARDS DUE-ON-
22 SALE REGULATIONS PREEMPT STATE LAW RE FEDERAL ASSOCIATION.
23 "STATE REGULATION OF VALIDITY AND ENFORCEABILITY OF DUE-ON-
24 SALE CLAUSES AND MORTGAGE INSTRUMENTS OF FEDERAL ASSOCIATIONS
25 EXECUTED ON OR AFTER JUNE 8, 1976, RENDERED INAPPLICABLE."

* * *

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1 MR. SWAN: Well, the Lipps will testify for
2 almost a year preceding the sale of--to Sandmar, they
3 attempted to sell their home; that all payments were
4 made promptly; that the house is in good condition.
5 Sandmar Associates, Mr. Brunnell, will testify that
6 the payments have been made regularly since then.
7 There has been no impairment of security.
8 And, I have a brief, here, that I hope will
9 convince this Court that the same philosophy that has
10 been used throughout this country, north and south,
11 east and west, to enjoin such a foreclosure as this,
12 has been part of Virginia law for a hundred years.
13 THE COURT: All right. Mr. Nageotte.
14 MR. NAGEOTTE: If Your Honor please, Mr.
15 Borinsky and I will share the duties this morning.
16 Mr. Borinsky will take the opening statement; I'll take
17 the closing. I'll take cross and he'll take direct.
18 THE COURT: That will be fine, all right.
19 MR. BORINSKY: May it please the Court, Your
20 Honor, we are going to show that First American Savings &
21 Loan, that the Lipps entered into a deed of trust, and
22 the deed of trust provided us with a right to accellerate
23 the note secured by the deed of trust if the property

were transferred without our consent.

We feel it is undisputed that it has not been our consent. And, as soon as we found out about the transfer, we immediately accelerated the note. And, we feel that the overwhelming weight of authority and specific Virginia statutory provisions authorizes to pursue this course of action.

THE COURT: All right. Mr. Swan, you may call your first witness.

- - -

Thereupon

JOSEPH M. BRUNNELL

was called as a witness by counsel for the Complainants, and having been previously duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SWAN:

Q. Would you state your name, please?

A. Joseph M. Brunnell.

Q. And, where do you live?

A. 7226 Buena Vista Court, Springfield, Virginia.

Q. And, what is your occupation?

A. Accountant.

1 Q. And, how long have you been an accountant?
2 A. Fourteen years.
3 Q. And, for whom do you work?
4 A. Self-employed.
5 Q. And, do you have a degree in accounting?
6 A. Yes.
7 Q. From where?
8 A. Ben Franklin University.
9 Q. Are you an officer of Sandmar Associates?
10 A. Yes.
11 Q. Did there come a time in 1979 that you purchased--
12 entered into a contract for the purchase of the property
13 known as lot 35, Section 1, Irongate?
14 A. Yes.
15 Q. And, from whom did you contract to purchase
16 the property?
17 A. The Lipps.
18 Q. And, is that contract to purchase recorded?
19 A. Yes.
20 MR. SWAN: Does Your Honor have that in this
21 case?
22 THE COURT: I think so. Yes, we have the
23 contract. It shows that it was recorded in deed book

* * *

1 That's not part of my case.

2 MR. NAGEOTTE: All right.

3 MR. SWAN: Well, it's just as easy to get them

4 in now as one, two, three.

5 MR. NAGEOTTE: Well, it's not in dispute, is it?

6 THE COURT: All right, this document will be

7 number three.

8 (Thereupon, the above-referred to document

9 was marked Complainant's Exhibit No. 3,

10 for Identification.)

11 (Thereupon, the above-referred to document

12 marked Complainant's Exhibit No. 3, was

13 received in Evidence.)

14 MR. NAGEOTTE: What we're here for today is

15 we attempted to foreclose, which was temporarily

16 enjoined by the Court. Today, what we're here for is

17 the injunction hearing.

18 THE COURT: You may go forward.

19 BY MR. SWAN:

20 Q. Mr. Brunnell, has Sandmar been making the

21 payments on this house for the last year?

22 A. Yes.

23 Q. When did they commence making the payments?

A. April, 1979.

Q. And, did they make them--how did they make these payments?

A. All payments were made timely on a partnership check, Sandmar Associates, made payable to the savings and loan. And, the check clearly identified the loan number on which the proceeds were being remitted.

Q. And, when did you first get the check back from the lender?

A. December, 1979.

Q. Is this the letter and the check that came back?

A. Yes.

MR. SWAN: I'd like to have this identified as our exhibit number four.

THE COURT: All right, give it to the clerk; she'll mark it as number four.

(Thereupon, the above-referred to document was marked Complainant's Exhibit No. 4, for Identification.)

(Thereupon, the above-referred to document marked Complainant's Exhibit No. 4, was received in Evidence.)

BY MR. SWAN:

* * *

1 That's all he can do.

2 MR. NAGEOTTE: Yes, sir, that's what I want

3 to make clear. He can't testify concerning an opinion

4 or a conclusion. He can testify only to what was told.

5 BY MR. SWAN:

6 Q. Why wasn't it successful, as far as you were

7 concerned or Sandmar was concerned?

8 MR. NAGEOTTE: Objection, Your Honor. That's

9 exactly why I objected.

10 THE COURT: Well, let him lay what he was told

11 and what deductions he drew there. I think that's fair.

12 MR. NAGEOTTE: I agree, Your Honor. But,

13 that wasn't the question that was asked.

14 MR. SWAN: What were you told by First American?

15 THE WITNESS: I was told by First American,

16 Mr. Harrison, specifically, that if Sandmar was willing

17 to pay approximately two points and approximately

18 thirteen-and-a-quarter percent interest that he would

19 consider dropping any future actions against Sandmar

20 or the Lipps.

21 THE COURT: What was the interest rate?

22 THE WITNESS: Thirteen-and-a-quarter. And, his

23 term was, "approximately, thirteen-and-a-quarter percent,"

1 Your Honor.

2 BY MR. SWAN:

3 Q. And, two points would be how much money?

4 A. Approximately, $600.

5 Q. And, what did you say to this?

6 A. I told him it wasn't acceptable. That I

7 didn't feel that we had done anything outside of our

8 contract other than to assume to pay the debts of the

9 Lipps. And, that I didn't feel that that was a part of

10 our contract.

11 MR. SWAN: I have no further questions.

12 THE COURT: You may cross examine.

13 CROSS EXAMINATION

14 BY MR. NAGEOTTE:

15 Q. Mr. Brunnell, you say you're an accountant

16 by trade?

17 A. Yes.

18 Q. And, do you represent, as an account-- You say

19 you're self-employed, I believe?

20 A. Yes.

21 Q. Do you represent other firms or persons in

22 their account matters and bookkeeping matters?

23 A. Not at the present time, no.

* * *

1 them rushed up here by someone after they're found
2 from the files.
3 THE COURT: Well, they're only marked for the
4 record for identification purposes, only, at this point.
5 MR. NAGEOTTE: All right.
6 BY MR. NAGEOTTE:
7 Q. Mr. Brunnell, exhibit A for identification is
8 a letter from Mr. Swan to First American Savings and
9 Loan Association advising that Mr. Swan has the Power
10 of Attorney to act for Mr. and Mrs. Lipps, is that
11 correct?
12 A. Correct.
13 Q. All right. Now, exhibit one, which is the
14 land contract for sale of improved real property,
15 Virginia--which is your exhibit one--this contract was
16 dated and signed by the Lipps and yourself, Joseph M.
17 Brunnell, secretary of Sandmar Associates, Inc., on
18 the 21st of April, 1979, isn't that correct?
19 A. That's correct.
20 Q. So, with that being correct, on May the 15th,
21 1979, your attorney--I guess Mr. Swan was your attorney,
22 is that correct?
23 A. Yes.

1 Q. Your attorney, Mr. Swan, wrote to First
2 American, sending them a copy of a Power of Attorney
3 that he had for the Lipps, and he made no mention of a
4 land sales contract, which was recorded and which was
5 dated April 21, 1979, is that correct?
6 A. That's correct.
7 Q. As a matter of fact, the land contract was
8 recorded at least by the clerk's certificate on the
9 14th of May, 1979. Do you agree with that? That's
10 the clerk of the circuit court.
11 A. Yes.
12 Q. Okay. So, on the 15th of May, your attorney
13 wrote a letter to First American after this land sales
14 contract had been executed; that is, after your deal
15 had been completely consummated with the Lipps, had
16 been signed by you all, had been recorded in the land
17 records. Then, your attorney wrote to First American
18 and said nothing about that. He just sent them a
19 Power of Attorney which he got from the Lipps, is that
20 right?
21 A. That's right.
22 Q. Now, I believe you said that there came a time
23 in--was it November or December, 1979, that you called

1 Mr. Harrison or Mr. Harrison of First American Savings &
2 Loan called you?
3 A. Mr. Harrison called me.
4 Q. Mr. Harrison called you. And, is that the
5 first time you had had a conversation with Mr. Harrison?
6 A. That is the first time that I personally had
7 a contact with Mr. Harrison.
8 Q. Fine. What did Mr. Harrison tell you about
9 this matter? Did he tell you he had found out about
10 this land sales contract?
11 A. Yes, he had. He did say that.
12 Q. Did he tell you that as a result of that, that
13 the savings and loan, First American Savings & Loan,
14 was going to accelerate this note?
15 A. No, he did not.
16 Q. He did not. Did he tell you that he would
17 have to--if you wanted to assume it, you would have to
18 buy it by the conditions of the savings and loan
19 association?
20 A. After he stated the conditions.
21 Q. And, the conditions were as he stated them,
22 is that correct?
23 A. The conditions were that we pay two points--an

1 additional two points on the outstanding balance and
2 allow the interest to be accelerated to approximately
3 thirteen-and-a-quarter percent interest. And, then,
4 if we would consider that, he would allow us to assume
5 the loan.
6 Q. All right. And, I assume because we are in
7 Court today, it was your decision not to pay that
8 amount, to assume it?
9 A. I would say it was a collective decision.
10 Q. All right. Is Sandmar Associates, Inc. in
11 the real estate business?
12 A. No.
13 Q. What kind of business do you do?
14 A. We use it for investments.
15 Q. It's an investment firm?
16 A. Yes.
17 Q. Who are the principals of Sandmar Associates,
18 Inc., the investment firm?
19 A. Stanley Sherman and myself.
20 Q. And, is one of the purposes of this firm to
21 invest in real estate?
22 A. Yes.
23 Q. And, is this particular house that we're talking

* * *

1 THE COURT: It calls for a legal conclusion
2 on his part.
3 MR. NAGEOTTE: It's proper cross examination.
4 THE COURT: I understand that. But, you're
5 asking for a legal opinion, Mr. Nageotte. If he knows,
6 that's one thing. But, he hasn't been qualified as an
7 attorney, at this point.
8 BY MR. NAGEOTTE:
9 Q. Sir, paragraph five of exhibit one, which is
10 your contract--land sales contract--recites the Power
11 of Attorney provisions, does it not? In other words,
12 it cites that you or your attorney would receive a
13 Power of Attorney from the sellers, the Lipps?
14 A. It does cite that, yes.
15 Q. And, is that the same Power of Attorney that
16 your attorney told First American about when you wrote
17 that letter of May 15, '79?
18 A. It would be an assumption on my part. I don't
19 know.
20 Q. All right, does this land sales contract also
21 appoint an escrow agent for purposes of holding the
22 normally used documents to convey titles such as the
23 deed and such as a release of the contract in the event

1 that performance is not met under the contract?
2 A. I believe so, but I'm not sure of the mechanics
3 of how this land sales contract works. I'm not an
4 attorney.
5 Q. All right, sir. The land sales contract was
6 a device prepared by the attorney to assist you in the
7 purchase of this property, is that correct?
8 A. Yes. And, I do believe that he mentioned
9 that it was also a device that would assist the Lipps
10 in selling the home.
11 Q. All right. Did the attorney in this case
12 represent both you and the Lipps?
13 A. In the sense that--I believe he was the
14 settlement attorney.
15 Q. All right. Well, how did Sandmar Associates
16 find out about the Lipps?
17 A. Through Judy Hoover of Century Realty.
18 Q. And, is Mr. Swan your attorney or the realty
19 company's attorney?
20 A. He's our attorney.
21 Q. And, he handled this transaction because you
22 were the purchasers, is that correct?
23 A. Yes.

1 Q. At the time--or, let me ask you, did the
2 realty company bring this deal to you? In other words,
3 did they bring it to you and ask you if Sandmar
4 Associates, Inc., your investment company, would be
5 interested in making this purchase?
6 A. Yes.
7 Q. Had you made prior purchases on land sales
8 contracts where there were due on sale clauses involved?
9 A. Not prior to this one, no.
10 Q. Not prior to this one. Have you made some since?
11 A. Yes.
12 Q. And, have you made them all in this same
13 manner, this recorded land sales contract and these
14 documents like the Power of Attorney?
15 A. I believe so.
16 Q. Were you aware as of the settlement of this
17 property that First American Savings & Loan Association
18 was the first trust holder?
19 A. Yes.
20 Q. Were you aware as of the settlement of this
21 property that the deed of trust, the third purchase money
22 deed of trust, exhibit number two, as recorded in land
23 records, had the due on sale provision and had in

boldfaced type in the margin this language, "notice the debt secured hereby is subject to call in full or the terms thereof being modified in the event of sale or conveyance of the property conveyed"?

A. No, I never read the deed of trust.

Q. All right, were you represented by an attorney, Mr. Swan, at that time?

A. Yes.

Q. Did Mr. Swan, on your behalf, do title examination work?

A. Yes.

Q. All right, did Mr. Swan ever tell you that he wasn't aware of that due on sale clause being on there when he did his title examination?

A. I believe so, yes.

Q. He told you it was on there when he did his title examination?

A. Yes, I believe so.

MR. NAGEOTTE: All right, thank you. I have no further questions.

THE COURT: Do you have any other questions?

MR. SWAN: Just one.

REDIRECT EXAMINATION

BY MR. SWAN:

Q Is there anything in this deed of trust, whatsoever, that says that First American Savings & Loan Association can charge you two points in an assumption of their loan?

MR. NAGEOTTE: Objection, Your Honor. The document speaks for itself, and he already testified that he had never seen it before. He just got it from his attorney.

THE COURT: Yes, the document speaks for itself.

MR. SWAN: Well, Mr. Nageotte's been going over these documents pretty well.

THE COURT: I'm about to call him down, too. He's been going over these documents and--

MR. SWAN: I'd like to note for the record--

THE COURT: The documents speak for themselves. You can't change them for the record.

MR. SWAN: I'd like to note for the record that there is nothing in this deed of trust that authorizes First American Savings & Loan Association to collect two points.

MR. NAGEOTTE: Objection, Your Honor. That's

more properly argument. I can't cross examine his statements here before the Court. That's argument.

THE COURT: Do you have any further questions?

MR. SWAN: I have no further questions.

(Thereupon, the witness was excused.)

THE COURT: Wait a minute. Let me ask you one question. What did you understand to be the rate of interest on the deed of trust which you agreed to pay off?

THE WITNESS: Nine-and-a-half percent.

THE COURT: Nine-and-a-half percent. All right, sir.

- - -

Thereupon

ALBERT B. LIPPS

the complainant, was called by counsel in his own behalf, and having been first duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SWAN:

Q. Would you state your name, please?

A. Albert B. Lipps.

Q. And, how old are you Mr. Lipps?

* * *

1 received in Evidence.)
2 BY MR. SWAN:
3 Q. Mr. Lipps, how many children do you have?
4 MR. NAGEOTTE: Objection, Your Honor.
5 THE COURT: Objection sustained.
6 BY MR. SWAN:
7 Q. Did there come a time when you wanted to move
8 from this town?
9 A. Yes, there did.
10 Q. What were the reasons?
11 MR. NAGEOTTE: Objection, Your Honor.
12 THE COURT: No, I'll let him proceed with that.
13 Objection denied.
14 THE WITNESS: Well, our house was no longer
15 comfortable with the size of our family. And, we just
16 felt it would be a good move to get our children out of
17 a townhouse and into a single family dwelling with a
18 yard. A place for toys and all the other nonsense that
19 goes along with it.
20 Q. When did you commence to sell your property or
21 to try to sell your property, the Irongate property?
22 A. I don't recall exactly the date that we first
23 started. The first thing we did in an attempt to sell

the property was to call, as a result of speaking with some friends, an investor in Alexandria.

Q. And, do you recall who that was?

A. It was Barr Realty, I believe is who it was.

Q. And, did you bring this to the attention of First American Savings & Loan?

A. What occurred was, they came out and gave us an estimate on the property and--

MR. NAGEOTTE: Excuse me, Your Honor. Could we have Officer Lipps identify who are "they?" He's using those terms and it's hard for the record.

THE COURT: Yes, who are "they?"

THE WITNESS: It was a representative of Barr Realty. I don't recall his name.

THE COURT: All right, okay.

THE WITNESS: He gave us an estimate on the property, and stated at the time that he would contact First American and try to work the arrangements out. He called us a day or two later, the representative of Barr Realty.

MR. NAGEOTTE: Excuse me, Your Honor, I'm going to have to object.

THE COURT: Objection, hearsay.

MR. NAGEOTTE: Yes, hearsay. I'm sorry.

BY MR. SWAN:

Q. What was the result of this contact with Barr Realty in July of 1978?

A. They stated that they couldn't purchase the property due to a clause in the contract that First American was holding.

Q. And, what next did you do to sell this property?

A. We put it on the market through Better Homes Realty.

Q. And, did Better Homes contact First American?

A. The representative from Better Homes, our realtor, stated she had.

Q. Did your realtor get a letter back from Better Homes?

MR. NAGEOTTE: Is this what we're talking about? The application?

MR. SWAN: That's correct.

MR. NAGEOTTE: Mr. Lipps, is this your signature on this?

THE WITNESS: I couldn't tell you from here.

MR. SWAN: (Handing)

THE WITNESS: Yes, sir, that's my signature.

1 MR. NAGEOTTE: If that's Mr. Lipps' signature,
2 we have no objection to that document, Your Honor.
3 THE COURT: All right, that will be received
4 as number seven.
5 (Thereupon, the above-referred to document
6 was marked Complainant's Exhibit No. 7,
7 for Identification.)
8 (Thereupon, the above-referred to document
9 marked Complainant's Exhibit No. 7, was
10 received in Evidence.)
11 BY MR. SWAN:
12 Q. Under assumption fees, what does it say?
13 MR. NAGEOTTE: Objection, Your Honor, the
14 document speaks for itself.
15 THE COURT: The document speaks for itself,
16 Mr. Swan. Let's move on. We have other things that
17 have to be heard this morning.
18 BY MR. SWAN:
19 Q. What was the results of the Better Homes
20 situation?
21 A. We listed with Better Homes for some hundred
22 and twenty days and, then, a little beyond that did
23 get a contract which was pending. The house was never

sold.

Q. Okay. And, then, what did you do?

A. We again listed through Long and Foster.

Q. And, how long did they have the contract, the listing, excuse me?

A. Ninety days, I believe.

Q. And, as a result of that, was there any transfer of the property?

A. No.

Q. And, did there come a time when you were approached by a realtor, or listed the property with--

A. Yes, our next move was to list the property with Red Carpet Realty.

Q. And, who, in particular, did you talk to there?

A. To a Mr. Kohler and Mr. Spears and Mrs. Hoover.

Q. And, as a result of that, did they produce a contract of sale?

A. Yes, they did.

Q. And, is that the contract of sale that we have here as exhibit one?

A. Yes, it is.

Q. Mr. Lipps, how much cash did you put down on your house when you first purchased it? Do you remember?

A. The one at Irongate? The home at Irongate?

Q. Yes.

A. I'll be honest. I cannot recall exactly how much cash we put down.

Q. Less than $5,000?

A. Oh, I'm sure.

Q. Do you recall how much you took out of the transaction when you contracted to sell the property to Sandmar?

MR. NAGEOTTE: Excuse me. Objection, Your Honor. Relevancy, again. We're here on a due on sale clause. I don't know what was paid down or what was taken out is relevant to the issue of due on sale clause.

THE COURT: I'm going to allow him to proceed, Mr. Nageotte. Objection denied.

THE WITNESS: I can't recall, exactly, how much money we took out of that sale. No, I can't.

MR. NAGEOTTE: Officer Lipps, that's your signature and your wife's signature on this?

MR. SWAN: (Handing)

THE WITNESS: Yes, it is.

MR. NAGEOTTE: Your Honor, if that is Officer Lipps' and his wife's signature, we don't object to the

1 document, except on the basis of relevancy. And, since
2 Your Honor has already ruled--
3 THE COURT: It will be allowed to go in as
4 number eight for the complainant, then.
5 (Thereupon, the above-referred to document
6 was marked Complainant's Exhibit No. 8,
7 for Identification.)
8 (Thereupon, the above-referred to document
9 marked Complainant's Exhibit No. 8, was
10 received in Evidence.)
11 BY MR. SWAN:
12 Q Now, wasn't there another transaction that
13 you were involved in during this same period of time
14 in Stafford?
15 MR. NAGEOTTE: Your Honor, if you want to take
16 these objections in order. Number one, leading; number
17 two, relevant--relevancy. I don't know the relevancy
18 of another--
19 THE COURT: Well, I don't know where you're
20 going, Mr. Swan. Where are you headed for at this
21 point?
22 MR. SWAN: Your Honor, what we're trying to
23 show throughout this is that there is unreasonable

1 restraint on alienation of property, here. This is the
2 basis of the whole case. It isn't a question of whether
3 it's a due on clause. The question of whether the
4 due on clause has kept this man from selling his house.
5 And, if it has, it's void ab initio under the facts of
6 this case.
7 Now, this is what we are trying-- Mr. Nageotte
8 has said, "Well, it's just a paragraph in there and he
9 signed it." These trusts are used throughout the country.
10 THE COURT: Well, he's already testified that
11 the purpose in wanting to sell his property was he
12 wanted to get into another home. That's what he said
13 he wanted to do. Ask him did he buy another home.
14 MR. SWAN: Did you attempt to buy another home
15 in Stafford County?
16 THE WITNESS: Yes, I did.
17 MR. SWAN: And, why wasn't that transaction
18 concluded?
19 THE WITNESS: We couldn't sell our house.
20 MR. SWAN: Was it a requirement of the lender?
21 THE WITNESS: Yes, it was all contingent on us
22 selling our home.
23 MR. SWAN: And, how much money did you drop

1 down there in trying to get out of that contract?
2 THE COURT: Well, that is, basically, immaterial.
3 What did you do with the proceeds you received from
4 this contract of sale from Sandmar? What did you do
5 with those proceeds?
6 THE WITNESS: I put them into buying another
7 home.
8 THE COURT: And, that's the house you're now
9 occupying?
10 THE WITNESS: Yes, sir.
11 THE COURT: All right, let's move on. Is that
12 a bigger and better home and more suitable for your
13 family?
14 THE WITNESS: Much better.
15 THE COURT: Is this a detached home?
16 THE WITNESS: Yes, sir, it is.
17 MR. SWAN: With a yard and a fence around it?
18 THE WITNESS: Yes, sir.
19 MR. SWAN: I have no further questions.
20 THE COURT: You may cross examine.
21 CROSS EXAMINATION
22 BY MR. NAGEOTTE:
23 Q. Officer Lipps, is there a dog in the yard?

A. As a matter of fact, there is.

Q. Officer Lipps, I'm going to try to get down to the nitty-gritty of your testimony, here. As I understood it, in your testimony, you went to about four different realtors to list and sell your property, which was in dispute with the Sandmar Associates people here, today, and you were not successful because there was a due on sale clause on the deed of trust, right, that said it couldn't be assumed?

A. I can only state that I was told by a couple of realtors while I was trying to sell my home that if I could sell through an assumption to investors, they could have sold my home several times over.

Q. Through an assumption, but not through properly doing it the way the due on sale clause required? In other words, it would be subject to an increased interest rate or some other consideration, is that true?

A. You're going to have to go back and go over that, again. I don't understand all this due on.

Q. Well, apparently, for one reason or another your house was particularly marketable to investors, is that right? Investors were interested in your property. Not some other fellow who, like you were

1 maybe a few years before that, was starting out and was
2 looking to buy a house like that. There, apparently,
3 wasn't much market for that. So, the real market of
4 your townhouse was to an investor, right?
5 A. It seemed to be.
6 Q. An investor couldn't make alot of money off
7 his investment in this case if he had to do what was
8 required under the due on sale clause in the deed of
9 trust, right?
10 MR. SWAN: Your Honor, I believe that's
11 objectionable.
12 THE WITNESS: I can't answer that. I would
13 like to be able to, but I can't. I'm not well enough
14 informed about that kind of thing to be able to answer it.
15 BY MR. NAGEOTTE:
16 Q. All right. But, did they tell you that the
17 due on sale clause in the deed of trust created a
18 problem with investors buying the house?
19 A. Yes.
20 Q. All right. And, did they tell you what they
21 suggested as a way around this due on sale clause,
22 this Red Carpet Realty? The ones that did a good job
23 here. They did a good job; nobody else could do it but

they did it. Did they explain to you how you might be able to get around this so the investors might be able to get around this due on sale clause in the deed of trust with this land sales contract recorded versus deed recorded maneuver?

A. They did explain the land contract to me.

Q. And, as a result of that, did they tell you if you would agree to do this land sales contract versus recorded deed that they would be able to make this transaction work with Sandmar Associates, Inc., or, I guess, the investors, the investors that wanted to buy your townhouse?

A. If you mean if they were going to sell that house on that land--if they had a deal to sell the house on that land contract, yeah, that's the way I understood it.

Q. And, so, the purpose of the land contract, as they explained it to you, was a legal maneuver, in effect, or tried to legally maneuver around the due on sale clause of the deed of trust?

MR. SWAN: I object.

THE COURT: That calls for a conclusion on his part. He doesn't know that, Mr. Nageotte.

MR. NAGEOTTE: All right.

BY MR. NAGEOTTE:

Q. Officer Lipps, I know that I can count on you. Did they tell you--did Sandmar Associates or Red Carpet Realty or any of these realtors that got you to sign this land sales contract, did they give you any reason for the signing of this land sales contract versus a normal deed other than the due on sale clause?

MR. SWAN: Your Honor, I don't even understand that question.

THE WITNESS: I'm just trying to understand. The reason that I sold the house under that particular kind of contract was because that particular kind of contract was a contract that I could sell my house under. That's, you know, there's no other reason for it except that, that's why, you know, it was there; it seemed okay to me and I sold my house.

THE COURT: All you wanted was your money to go buy another house?

THE WITNESS: I wanted to be in good enough condition financially to get my family another home.

MR. NAGEOTTE: I understand. And, did they tell you that if they had to go through the provisions

1 of the due on sale clause you woudn't be in that
2 financial position because it would take some money
3 to do that?
4 THE WITNESS: If I understood the question,
5 I'd answer you. But, I don't understand.
6 BY MR. NAGEOTTE:
7 Q. You know, I am trying to equate--I know you're
8 not a lawyer and I know you're not a realtor. But, I
9 know you had a grip on what was going on. Maybe not
10 a good one, but you had a grip on it, that they were
11 trying to accomplish something here which was to get
12 you more money and to make more money for the investor
13 or for the investor who bought your house.
14 MR. SWAN: I object.
15 THE COURT: I don't know whether he'll know
16 what the purpose the investor bought it for. Do you
17 know that?
18 THE WITNESS: No, I don't.
19 MR. NAGEOTTE: But, you wanted to make the
20 maximum amount of money, right?
21 THE WINTESS: I wanted to make enough money
22 to get me another home.
23 BY MR. NAGEOTTE:

1 Q. And, you had been told because of the due on
2 sale clause and the deed of trust that was not possible
3 because there was only so much to go around and things
4 would have to be paid, isn't that true?
5 A. The way that I understood it before I went
6 into this was, I don't know anything, to begin with,
7 about due on sale clauses. What I know is that they
8 said I could not sell my house to an investor if the
9 house was not--if, if there was an assumption to take
10 place, the home had to be occupied. That's the way
11 I understood why I could not sell my house to an
12 investor. And, other than that, yes, this was a way
13 around that particular thing that I understood, okay?
14 Q. All right, but, it was represented to you
15 that it was a way around the problem?
16 A. Yes, it was a way around the problem.
17 Q. And, I assume that you were aware that the
18 normal way to buy real estate is to enter into a contract
19 and, then, go to settlement and execute a deed, is that
20 correct?
21 A. Right.
22 Q. And, you were aware, at the time you handled
23 this matter, that this was a little bit different than

the normal way, is that correct?

A. I was aware of that, yes.

Q. And, did Mr. Swan advise you as to why this was being done differently or why there was no deed?

A. The contract was explained to me by both Mr. Swan and the realtors. They went over it with me and explained the manner in which it was handled in terms that I could understand.

Q. All right. Now, when you went to settlement and got your money and went and bought your other house, did you tell First American that this had occurred? First American Savings & Loan Association?

A. No.

Q. Is there any particular reason why you didn't tell them?

A. I sent a letter to First American. I think they told me to--First American telling them that all further transactions be handled through Mr. Swan.

Q. Through Mr. Swan?

A. Right.

Q. And, Mr. Swan has gotten you and your wife to sign a Power of Attorney giving him the right to act with respect to this property for you, is that correct?

A. That's correct.

Q. And, I want to show you exhibit B for identification. It's a Power of Attorney dated May 10, '79. You and your wife signed it, I think. Tell me if that's not right.

A. That's our signature, yes, that's what it is.

Q. And, that's the Power of Attorney that gave Mr. Swan, the lawyer, the right to handle your affairs at First American, is that correct?

A. Right, and the letter that I sent to them explaining that he would be handling it.

Q. All right. And, this Power of Attorney and this--his letter and your letter, that was sent after the closing? In other words, after you executed this land sale contract, right?

A. According to the date, it would have been, yes.

MR. NAGEOTTE: Okay, thank you very much, Officer Lipps.

MR. SWAN: I have no further questions.

THE COURT: All right, sir, you may stand aside.

(Thereupon, the witness was excused.)

- - -

* * *

THE COURT: You filed an answer in these matters this morning or yesterday, is that right, or today?

MR. SWAN: No, on the 20th, Your Honor.

THE COURT: Well, this indicates that it was filed on February 27th.

MR. SWAN: I filed with the Court. The certificate will state there, though, the date I mailed them to Mr. Nageotte.

THE COURT: Objection sustained. The witness will not be allowed to testify. You have not complied with the rules of discovery. You may stand aside, sir. Thank you.

(Thereupon, the witness was excused.)

MR. SWAN: I'll call Mrs. Hoover, please.

- - -

Thereupon

JUDITH HOOVER

was called as a witness by counsel for the complainants, and having been previously duly sworn by the Clerk, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SWAN:

Q. Would you state your name, please?

A. Judith Hoover.

Q. And, where do you live?

A. Manassas, Virginia.

Q. And, what is your profession?

A. Real estate salesperson.

Q. And, how long have you been so engaged?

A. For a year-and-a-half. And, I have sold, previously, in Maryland.

Q. Did there come a time when you met the Lipps?

A. Yes.

Q. And, about when was that?

A. In April of 1979.

Q. Do you know anything of your own personal knowledge of their attempt to sell their property?

A. I was aware that their house had been on the market for ten months when it was listed with Red Carpet Century, and they had not been able to sell it.

Q. Did they ever tell you why they couldn't sell it?

A. The lender would not allow the loan to be assumed by investors. And, to a large extent, the area that they lived in has turned into an investment

1 community.

2 Q. Did you bring them a contract for sale on this

3 property?

4 A. Yes, I did.

5 Q. And, from whom?

6 A. Sandmar Associates.

7 Q. And, is that exhibit one in this case?

8 A. Yes, it is.

9 Q. Have you seen this house recently?

10 A. Yes, I have.

11 Q. About how long ago?

12 A. I've seen it within the last three weeks.

13 Q. And, it is still there?

14 A. Yes.

15 Q. And, has there been any impairment or damage

16 to it of any kind?

17 A. No, there has not.

18 Q. Are you aware of the present market in

19 refinancing in this area?

20 A. Yes.

21 MR. NAGEOTTE: Objection, Your Honor. This

22 witness has been called as a regular witness, not as

23 an expert witness. And, it calls for a legal conclusion

on her part. Interrogatory answers three and four, Your Honor--interrogatory three said, "If you plan to call any witnesses other than expert witnesses..." interrogatory three was answered yes. Interrogatory four asked who they were and they were listed: Lipps, Lipps, Hoover, Sherman--

THE COURT: Objection sustained.

BY MR. SWAN:

Q. Before the Sandmar Association, did you have any other people in this property, interested?

A. I did not, personally, no. I was the selling agent.

Q. Did you, at any time, contact First American concerning this loan?

A. Our loan processor did.

MR. NAGEOTTE: Objection, Your Honor.

THE COURT: Well, she's answered the question.

BY MR. SWAN:

Q. I show you this document.

A. Yes, that was in our file.

MR. NAGEOTTE: Your Honor, this document was provided to us. It's signed by Officer Lipps. And, really, because it's signed by Officer Lipps, I'm not

* * *

1 on there.

2 MR. SWAN: I'm happy to deduct, she can't

3 testify.

4 MR. NAGEOTTE: Well, after all that, Your Honor,

5 with that extraneous writing, we have no objection.

6 With the extraneous writing removed--

7 THE COURT: All right, that will come in as

8 number nine for the complainants.

9 (Thereupon, the above-referred to document

10 was marked Complainant's Exhibit No. 9,

11 for Identification.)

12 (Thereupon, the above-referred to document

13 marked Complainant's Exhibit No. 9, was

14 received in Evidence.)

15 BY MR. SWAN:

16 Q. This is the document that your company received

17 back from First American Savings & Loan Association?

18 A. Yes.

19 MR. SWAN: I would have this document also

20 speak for itself. And, that's going to be number nine?

21 THE COURT: Number nine.

22 MR. SWAN: I have no further questions.

23 THE COURT: Do you have questions?

MR. NAGEOTTE: I just have one or two, Your Honor.

CROSS EXAMINATION

BY MR. NAGEOTTE:

Q. Mrs. Hoover, I want to show you exhibit number nine. And, this is dated April 11, 1979, is that correct?

A. Yes.

Q. Now, I assume that this document is part of your office's standard policy, when you list a property and you know there's a trust on it, you write and say, "Give me the details of the trust," is that correct?

A. Exactly, yes.

Q. And, that's what this document was sent out to do?

A. Yes.

MR. NAGEOTTE: Okay, I don't have anything further, then, Your Honor.

THE COURT: All right, you may stand aside.

(Thereupon, the witness was excused.)

MR. SWAN: I have just one additional question.

MR. NAGEOTTE: Well, Your Honor, unless it's based on my question on cross, it's beyond the scope.

* * *

1 Not the same due on sale clause as we have
2 here. They held that was not a good clause.
3 Florida has ruled--again, the language of the
4 clause specifically says, "In the event that this property
5 is sold by the maker, herein the mortgagee shall have
6 the right to defer the unpaid balance including interest
7 due and payable at their option." Nothing about
8 modifying terms, anything else.
9 California, I don't even want to talk about
10 California, Your Honor. They are crazy out in California.
11 But, that case is Cynthia J. Wellencamp versus Bank
12 of America. And, I just hope to say that California
13 is too far away from us to think about it.
14 THE COURT: Bank of America is a pretty big
15 outfit.
16 MR. NAGEOTTE: Well, I know that they are,
17 Your Honor, but California is a crazy place. And, I
18 don't like to rely on California law in Virginia. Every
19 time I go to the Supreme Court of Virginia and quote a
20 California case, I get that look from those justices
21 like I got some kind of social disease. And, I don't
22 like to talk much about California law.
23 THE COURT: I hope that's in the record when

1 it goes down there.

2 MR. NAGEOTTE: Your Honor, Arkansas has ruled
3 that the mortgagee cannot simply on the basis of a
4 clause in the mortgage which provided that, "Maturity
5 on the debt secured could be accelerated if the mortgage
6 was sold or conveyed or any part of the mortgage premises
7 without written consent or mortgagee accelerate the note
8 to incur the debtors note payable and foreclose upon
9 the property, but rather, mortgagee had an obligation
10 to justify its refusal to consent to sale," et cetera.
11 Now, that's not a case like we have here.
12 Again, the specific provisions of due on sale
13 clause were not that they could modify the terms.
14 Arizona. In Arizona, they did not strike down
15 due on sale clauses. What the court did in this case,
16 in the Arizona case of Payton versus First Federal
17 Savings and Loan Association of Phoenix, they held that
18 in the particular facts of this case the imposition of
19 the due on sale clause was a result of prejudicial
20 conduct of the lender. So, I don't think that's really
21 what we have here. There's no evidence in this case
22 of prejudicial conduct.
23 The evidence was that very quickly after the

* * *

1 evidence. You want to put on?

2 MR. NAGEOTTE: Yes, sir, Your Honor. We'll

3 just call Mr. Harrison.

4 THE COURT: All right, sir.

5 - - -

6 Thereupon

7 JAMES H. HARRISON

8 was called as a witness by counsel for the defendants,

9 and having been first duly sworn by the Clerk, was

10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. BORINSKY:

13 Q. State your name, please.

14 A. James H. Harrison.

15 Q. What is your occupation, Mr. Harrison?

16 A. I'm executive vice president, chief executive

17 officer of First American Savings & Loan Association.

18 Q. Mr. Harrison, when did it come to your

19 attention, or Association's attention, that there had

20 been a recordation of a land sales contract in this case?

21 A. The first evidence that we had was we received

22 a cancellation notice on the fire insurance policy

23 cancelling the policy, that it was necessary for us to

have to insure our interest in the property. We called the agents for the insurance company and were told the reason the policy had been cancelled, which was in Mr. and Mrs. Lipps' name, is that they no longer owned the property and that it had been sold. That was on the 22nd of October that we received this notice.

Q. What year was that?

A. Seventy-nine. We immediately started investigating, and we did determine that there was a land sales contract and went to the courthouse and got copies of that land sales contract.

We also found out who the principals were involved and who the attorney was, and we contacted them and told them this was in violation of our deed of trust. And, if they would make an application to assume the loan, we would consider granting that. They would not make the application to assume the loan because they were not going to pay an assumption fee, et cetera.

We, then, wrote them a letter dated November 18 that we were going to enforce our remedies in the deed of trust.

1 Q. Was the requested increase in interest on the
2 assumption, was that at market or above market?
3 A. Slightly below market.
4 Q. Did you give the Lipps and Sandmar Associates
5 notice of your exercise of acceleration?
6 A. We certainly did.
7 Q. When was that?
8 A. November the 18th is my letter that was sent
9 to Mr. Lipps with a copy to Sandmar Associates, a copy
10 to Mr. Swan, and a copy to our general counsel. All
11 of these were mailed certified with return receipt
12 requested.
13 Q. That's less than a month after you found out
14 about the transfer?
15 A. Well, actually, this had to go before our
16 board of directors, and it was about four days after
17 the directors passed the foreclosure resolution.
18 Q. Mr. Harrison, is First American Savings &
19 Loan Association a member of the Federal Home Loan Bank
20 Board system?
21 A. Yes, sir.
22 Q. They're regulated by the Federal Home Loan
23 Bank Board?

A. Yes, sir.

Q. They're audited by them?

A. Yes, sir.

MR. BORINSKY: I have no further questions.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. SWAN:

Q. Mr. Harrison, do you have a commitment today on this lot?

A. I don't understand the question.

Q. A loan commitment on this property to somebody else?

MR. NAGEOTTE: Objection, Your Honor. That goes beyond the scope of direct examination. He wasn't examined on any current commitment from anyone or to anyone. And, it is clearly beyond the scope.

THE COURT: It is. It's clearly beyond the scope. There's no question about that. Do you want to make him your own witness?

MR. SWAN: I'd be happy to.

THE COURT: All right.

MR. NAGEOTTE: Well, Your Honor, he can't make him his own witness unless it's in rebuttal.

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THE COURT: Well--

MR. NAGEOTTE: Well, I don't want to delay, Your Honor. Just go ahead.

BY MR. SWAN:

Q Do you have a present commitment on--a loan commitment on this piece of property?

A Yes. We took a loan--

Q No, just yes. I'll ask the questions.

THE COURT: Give him a chance to explain, Mr. Swan. He says yes and he starts explaining. Now, let him explain it. Go ahead, sir.

THE WITNESS: We did take a loan application. Quite frankly, I cannot recall the name of the borrower. We did take a loan application for an FHA loan on this thing--on this property, which, because of the knowledge of this court case, and this was a graduated payment FHA mortgage--FHA is notoriously slow in their processing--because of the pressing nature of the legal proceedings, we were able, by hand-walking papers through the federal housing administration, to get this loan approved in less than thirty days.

MR. SWAN: I don't think this is responsive to my question, Your Honor, at all.

THE WITNESS: And, we did commit to the borrower. We did send out letter of instructions to the attorney. It did not settle.

THE COURT: It did not settle?

THE WITNESS: I have been informed that the owners of the property refused to go to settlement.

THE COURT: All right, sir.

THE WITNESS: That is hearsay.

THE COURT: All right. Go ahead, sir, ask another question.

BY MR. SWAN:

Q. How many points were involved in your loan--the commitment loan--to these purchasers?

A. I am not sure. They were the market points at the time the application was taken. I think it was six or seven points.

Q. Can you identify this document?

A. Yes.

MR. NAGEOTTE: Your Honor, I don't want to belabor this as--

MR. SWAN: But, you seem to always be belaboring.

THE COURT: Mr. Swan, you gentlemen, let's move on with this.

MR. NAGEOTTE: I just want to note an objection on relevancy to all this line of questioning for the record and go on.

THE COURT: Well, he's making him his own witness, and I'm going to let him proceed. Go ahead.

THE WITNESS: Yes, sir.

BY MR. SWAN:

Q. And, as--well, it speaks for itself. Does that say that eight points are chargeable by the lender in the next transaction?

A. It says seven points.

Q. And, what does it say to the purchaser?

A. One.

Q. Well, does seven and one make eight?

A. Seven and one makes eight.

Q. So, the lender gets eight points on that loan. Now, how much was the balance on the Lipps' loan?

THE COURT: Do you want to introduce these documents?

MR. SWAN: Yes.

THE COURT: That will be number ten.

MR. NAGEOTTE: Objection to document just for relevancy, Your Honor.

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THE COURT: Objection denied.

(Thereupon, the above-referred to document was marked Complainant's Exhibit No. 10, for Identification.)

(Thereupon, the above-referred to document marked Complainant's Exhibit No. 10, was received in Evidence.)

BY MR. SWAN:

Q. Now, how much is the payoff on the Lipps' loan?

A. I don't know. Somewhere in the neighborhood of $30,000, $29,000.

Q. Okay, so far as the lender is concerned, what is the commitment on this loan?

A. $37,100.

Q. So, on the basis of you putting up $7,000 more money, you collect at settlement eight points times thirty-seven point one, is that correct?

A. That's correct.

Q. Then, that's about $3500?

A. Do the math. If you give me time, I can multiply. It's about $2968.

Q. And, on the initial loan to the Lipps, you collected two points, one from the seller and one from

the purchaser?

A. That's standard procedure.

Q. That isn't responsive to my question.

A. I'll have to look. I'm looking at the settlement statement. That's correct.

Q. So, in other words, you get $3500, twenty-eight and two points in the initial loan is approximately $3500 already in points in this loan, is that correct?

A. That's correct.

Q. Isn't that really the reason why you're foreclosing?

A. I don't understand the question.

Q. So you could put $6,000 additional, or $7,000 in additional investment of money on the same piece of property? You can get $3500 return in cash like that?

A. I still don't understand the question.

Q. I say isn't that the reason you're foreclosing? Because you can get, for an additional outlay of $7,000, you can get a return immediately of $3500 cash?

A. No. The reason that we are foreclosing on this is we do not believe that we have an obligation to Sandmar Associates for one thing.

We agreed to lend Mr. and Mrs. Lipps X number

1 of dollars at X percentage rate for thirty years. We
2 will stand by that commitment for the thirty years. I
3 have never agreed to lend to Sandmar Associates one
4 penny.
5 The First American Savings & Loan Association
6 is very anxious for the State of Virginia to rule on
7 the validity of the due on sale clause. And, that is
8 the reason that this case has gone this far.
9 Q But, you don't doubt the fact--
10 THE COURT: Hold it just a moment. Are you
11 saying, then, that you prefer this to go on to
12 Richmond to be decided?
13 THE WITNESS: No, sir. I'm saying I'm very
14 anxious for the State of Virginia--
15 THE COURT: Well, that's who's going to rule,
16 isn't it, the Supreme Court of Virginia?
17 MR. NAGEOTTE: Excuse me, Your Honor. I'm
18 going to object. This witness is not qualified--
19 THE COURT: All right, I'm sorry. I didn't
20 mean to interrupt you.
21 MR. NAGEOTTE: Legally, who's going to rule
22 on what.
23 THE WITNESS: I would assume this Court could

1 rule. I don't know.
2 THE COURT: Well, go ahead.
3 BY MR. SWAN:
4 Q. Is there anything in the deed of trust that
5 allows you to charge these people a point on anyone
6 assuming this loan?
7 MR. NAGEOTTE: Objection, Your Honor.
8 THE COURT: The document speaks for itself,
9 Mr. Swan. We've been through that several times before.
10 MR. SWAN: I apologize. I have no further
11 questions.
12 THE COURT: Do you have further questions,
13 Mr. Nageotte?
14 MR. NAGEOTTE: Just a couple, Your Honor.
15 REDIRECT EXAMINATION
16 BY MR. NAGEOTTE:
17 Q. Mr. Harrison, had Sandmar Associates credit
18 been acceptable by First American and had they agreed
19 to the terms of the increased interest rate which would
20 have still been below market, would First American
21 have accepted them as an assumer of this loan?
22 A. Assuming their credit was okay and their
23 ability to pay was okay, yes, they would have been

1 accepted to assume the loan.

2 Q. All right, now, Mr. Harrison, calling your

3 attention to the letter, which you mentioned was sent

4 out with reference to this recent loan commitment, let

5 me ask you, did First American receive that loan

6 commitment after this court case was filed and after

7 Sandmar Associates was suing First American?

8 A. Yes.

9 Q. And, notwithstanding the fact, was Sandmar

10 Associates the seller in that contract?

11 A. Yes, I assume.

12 Q. All right. And, notwithstanding the fact

13 that Sandmar Associates, who was suing First American,

14 was the seller in the contract, that these people came

15 in and asked you to make an application. Did you make

16 that application for those people on that FHA loan?

17 A. Yes. And, we, as I say, we moved heaven and

18 earth to process that application, which was completed,

19 I think, on the 28th of this month.

20 Q. All right. Now, in view of your efforts, did

21 counsel in this case write a letter to all the parties

22 involved?

23 THE COURT: I've got a copy of that and I'm

1 aware of that. I'm aware of that. Court takes
2 judicial notice of that.
3 MR. NAGEOTTE: All right.
4 BY MR. NAGEOTTE:
5 Q And, Mr. Harrison, do you have any legal
6 right to refuse to take someone's loan application?
7 A No.
8 Q All right. Now, calling your attention to
9 your contacts with these people, I ask you if this
10 original letter signed by Robert Swan containing a
11 copy of a--
12 MR. SWAN: I don't see that this is material
13 at all. He's my witness, Your Honor, on cross examina-
14 tion.
15 THE COURT: You made him your witness for one
16 purpose, for outside the matter of the direct examination,
17 Mr. Swan. This is cross examination of this witness at
18 this point on your--
19 MR. SWAN: Well, it'll have to be restricted
20 to the issue, then.
21 THE COURT: All right, go ahead.
22 MR. SWAN: He can call him back as his witness,
23 if he wants.

* * *

1 further correspondence with respect to this property
2 should be directed to their attorney, Robert Swan?
3 A. Yes.
4 Q. This is the letter you got?
5 A. Yes, it's an unsigned letter.
6 MR. SWAN: I have no objections.
7 THE COURT: This will be received and marked
8 as defendant's exhibit C.
9 MR. NAGEOTTE: Well, Your Honor, we can't call
10 Mr. Swan. He's the counsel in the case. But, I'd
11 sure like to ask him why he didn't sign that letter.
12 THE COURT: Well, it does speak for itself.
13 (Thereupon, the above-referred to document
14 was marked Defendant's Exhibit C, for
15 Identification.)
16 (Thereupon, the above-referred to document
17 marked Defendant's Exhibit C, was
18 received in Evidence.)
19 BY MR. NAGEOTTE:
20 Q. Mr. Harrison, you were questioned concerning a
21 whole bunch of money going to run around here on all
22 these transactions and this seven points and one point,
23 is that right?

A. Yes.

Q. What are the current points for VA and FHA loans?

A. At the present time, anywhere from nine to eighteen.

Q. Nine to eighteen points?

A. (Nodding head)

Q. At what percentage rate?

A. At a coupon rate of twelve.

Q. All right. Now, does the amount of points and the amount of interest fluctuate and adjust? Are different points charged for different kinds of loans?

A. Well, the FHA and VA rate is regulated by the government. And, the interest rate, of course, is not subject to market fluctuation unless changed by the government. The yields on FHA and VA loans are raised to comparable market rates by charging the sellers fees commonly called points.

Q. Okay. So, you really don't have any control over what's charged, right?

A. No, sir.

Q. The government tells you what to charge, right?

A. (Nodding head)

Q So, this tremendous seven points and one point that you were going to charge these poor folks, that wasn't First American's idea to charge that. That was the government's idea, wasn't it?

A Well, if the FHA and VA rate was allowed to float with the market, that would not be the points charged to the seller, that's correct.

MR. NAGEOTTE: Okay, thank you, sir.

MR. SWAN: I have to respond to that.

THE COURT: Now, we're not going any further. We're cutting it off, gentlemen. I can't do it. This is all, Mr. Swan. I'm not taking any more. You may stand aside, Mr. Harrison. This case is under advisement of this Court, and I'll try to give you a decision forthwith. In the meantime, there will be no foreclosure until the decision is reached by the Court.

(Thereupon, the witness was excused.)

MR. NAGEOTTE: Your Honor, may I tender to the Court the cases?

THE COURT: You may, sir. Let's have it.

(Thereupon, at 11:26, p.m., the hearing in the above-entitled matter was concluded)

- - -

EXHIBIT NO. 1
PLT DEFT COMT
CASE NO. Chy-13246
DATE 2-27 1980
JUDGE:

10030

LAND CONTRACT FOR SALE OF
IMPROVED REAL PROPERTY - VIRGINIA

THIS AGREEMENT OF SALE, made this 21st day of April, 1979 by and between ALBERT B. LIPPS and JUDITH W. LIPPS, his wife, hereinafter known as Seller; and SANDMAR ASSOCIATES, INC., a Virginia corporation, hereinafter known as Purchaser;

W I T N E S S E T H:

That For valuable consideration of the sum of Ten Dollars ($10.00), receipt of which is hereby acknowledged, the Purchaser agrees to buy and the Seller agrees to sell for the price and upon the terms set out below, all that certain piece, parcel or lot of land, together with improvements thereon, described as follows, to wit:

> Lot 35, of the subdivision of Section 1, IRONGATE, as the same is shown on plat thereof recorded with Deed of Dedication in Deed Book 435 page 304 among the land records of Prince William County, Virginia.
>
> Together with: Stove, refrigerator, dishwasher, disposal, central air conditioning, washer, dryer, existing storm windows and doors, wall to wall carpeting, and all other permanent fixtures. And the Red Carpet Warranty Plan.

This is to certify that the tax imposed by section 58-54.1 has been paid
Consideration 36,000
Tax

1. The total sales price of this contract shall be Fifty Four Hundred Dollars ($5,400.00) over and above the balance of the loan, payable as follows:

Purchaser shall pay $5,400.00 to Seller at closing, at which time the Purchaser may record this Land Contract, among the land records of Prince William County, Virginia. Purchaser shall be entitled to possession of the property at settlement.

Purchaser agrees to pay all payments which shall become due on the deed of trust recorded among the land records of Pr. Wm. County, Virginia, in Deed Book 858 at Page 487 with the balance as of 4-11-79 of approximately 30,986.97, and the monthly payment of principal, interest and taxes being $319.00. Purchaser agrees to save Seller harmless from any liability for said Deed of Trust.

2. The Purchaser and Seller agree that so long as the subject property is encumbered by the Deed of Trust recorded in Deed Book 858 at Page 487 among the land records of Pr. Wm. County, Virginia, then Purchaser may, at its option, forward the payments falling due thereunder for principal and interest and taxes, if any, directly to the noteholder of the above referenced trust.

The Purchaser and Seller agree that the payments forwarded by the Purchaser directly to the Noteholder aforesaid shall be considered by the Seller and Purchaser as fulfilling all of the remaining requirements of the payment of monies due under this Land Contract.

3. It is mutually agreed that any payments made by the Purchaser or his successors or assigns as stated in Paragraph 2 above as a part of the purchase price of the real estate to be conveyed by this Land Contract shall be considered for the Purchaser's sole benefit as interest paid on the outstanding unpaid balance and as such may be claimed

by the Purchaser exclusively as deductions for any purpose deemed proper for filings with the Internal Revenue Service of the United States.

4. Escrow Provisions: Purchaser and Seller hereby agree that the Seller shall deposit a General Warranty Bargain and Sale Deed to the property with the mutually designated Escrow Agent Robert E. Swan, and hereby further agrees that the delivery of the aforesaid deed to Purchaser shall not be completed by the Escrow Agent until payment by the Purchaser to the Seller or to the noteholder of any amount remaining due under the Deed of Trust recorded in Deed Book 858 at Page 487.

5. Power of Attorney: Purchaser and Seller hereby agree that a Power of Attorney dated ---------- shall be executed by and between the Purchaser and Seller shall be incorporated without further reference and made a part hereof. The purpose of said Power of Attorney is to permit the Purchaser to administration of subject real estate of this contract.

6. Seller warrants that all appliances, equipment and plumbing included in the sale as set forth above shall be in working condition at the time of possession by the purchaser.

7. All loss to property prior to the possession date set forth above shall be borne by the Seller. The Purchaser assumes all risk of loss, injury or damage by fire, casualty, act of God or by any other means whatsoever from and after the date of possession of the Purchaser to said lot, or to persons or property present thereon and hereby agrees at his

expense to keep said improvements continuously insured against such hazards, casualties and contingencies.

8. Purchaser further agrees that from the date of possession, the Purchaser assumes all liability for payment of any and all real estate taxes and other community assessments against the referenced real estate, and hold Seller harmless for the payments when they shall fall due. Accordingly, the purchaser may consider any tax payments made as a responsibility of the Purchaser as though Purchasers were the legal title holder of the referenced real estate.

9. During the continuance of this contract, Purchaser shall keep the land and premises in good repair and fully protect it from the elements to the satisfaction of the Seller or any mortgagee having a prior security interest in this real estate. Purchaser will continually keep insured at his expense the described property against such hazards, casualties and contingencies in such amounts as shall be required by the holders of the notes referenced in Paragraph 2 above; that such policies of insurance shall contain the customary mortgageclause endorsement in favor of the holder of said indebtedness and shall be held by it as further security for the payment of the aforesaid debt. Seller agrees to perform on behalf of Purchaser as Purchaser's attorney in fact in supplying prior secured mortgagees with insurance policies as required by said mortgagees, and Purchaser agrees to pay and indemnify Seller for any insurance premiums required of Seller by prior secured mortgagees.

10. In the event of default by Purchaser of any of the terms and conditions called for in this contract, then and upon such default continuing for a period of 60 days, the Seller shall have the right to demand the return of the escrowed deed from the Escrow Agent and said contract shall be null and void with the Seller retaining all funds paid by Purchaser as liquidated damages. Both Purchaser and Seller agree that they will hold the Escrow Agent harmless from any damage as a result of the return of the Deed to Seller after default by Purchaser. Seller shall give Escrow Agent a written request setting forth the reason or reasons for the default and the demand of the return of the deed prior to the release of the deed by the Escrow Agent.

11. The Seller covenants and agrees not to further encumber or convey the above-described property from and after the date of this Agreement.

12. It is understood and agreed that the Purchaser may sell and assign his rights under this Agreement at any time or times only with the written consent of Seller.

13. The Purchaser may cause title to be examined prior to possession. It is understood that title to said property shall be good of record and in fact, and Purchaser may purchase at time of possession of said property a title insurance policy insuring Purchaser's interest subject only to normal subdivision covenants, restrictions, easements and rights-of-way of record, if Purchaser shall so desire. If title is found defective, this Contract shall be null and

void, and all sums advanced by Purchaser in furtherance of this Agreement shall be refunded; however, a reasonable time shall be allowed the Seller to correct any defects reported by the title examiner.

14. Examination of title, notary fees, title insurance premium and state and county recording taxes for recordation of this Contract and the General Warranty Deed shall be at the Purchaser's expense.

A termite inspection is to be ordered at Seller's expense, and a certificate issued to Purchaser showing property free of termite activity. If termites are found, repairs of any structural damage shall be at Seller's expense.

16. Time shall be of the essence of this Agreement and the Seller agrees to deliver possession of said premises at settlement.

17. The Purchaser and Seller agree that it is the intent that legal title, in fee simple, to the subject real estate of the contract shall not immediately pass to the Purchaser.

18. Incident to the contract of sale, the Seller agrees to transfer to Purchaser any existing escrow balance which Seller may have with the noteholder of any secured Deed of Trust recorded prior to this Contract. Seller agrees to execute and deliver to Escrow Agent a statement assigning said trust funds to the order of Purchaser, which Escrow Agent is authorized to deliver with the Deed to the Purchaser.

19. The invalidation for any reason of any portion herein shall not cause this contract to be invalidated in its entirety, but shall survive any such failure of any part hereof.

20. The Purchaser and Seller acknowledge that they have entered into this Agreement upon their own free will and accord, cognizant of the existence of prior secured Deed of Trust remaining secured by the subject real estate of this transaction.

21. The Purchaser will execute a release of the contract, to be held by the Escrow Agent, to be recorded only in the event there is default by the Purchaser.

WITNESS the following signatures and seals:

Albert B. Lipps

Judith W. Lipps

SANDMAR ASSOCIATES, INC.

By: Joseph M. Brunelle, Secretary

STATE OF VIRGINIA
COUNTY OF FAIRFAX, to wit:

The foregoing Agreemnnt was acknowledged before me this 10th day of May, 1979, by Albert B. Lipps, Judith W. Lipps, and Joseph M. Brunelle, Secretary for Sandmar Associates, Inc.

My commission expires: Sept. 19, 1981.

Notary Public

DONNA GOWANS NOTARY PUBLIC FAIRFAX CO. VA.

Recorded with certificate annexed May 14 1979
at 3:56 P. M., Prince William County, Virginia.

Teste: Charlton Graff Clerk

11263

PURCHASE MONEY

BOOK 858 PG 487

DEED OF TRUST

Ret. to: Lonas & Weber, Attys., Manassas, Va. 22110 8-20-76

THIS DEED OF TRUST is made this 27th day of July, 1976, among the Grantor, Albert B. Lipps and Judith W. Lipps, his wife, (herein "Borrower"), First American Service Corporation, of Virginia, and, of, Virginia, trustees (any one of whom may act and who are referred to herein as "Trustee"), and the Beneficiary, FIRST AMERICAN SAVINGS AND LOAN ASSOCIATION, a corporation organized and existing under the laws of VIRGINIA, whose address is 13448 JEFFERSON DAVIS HIGHWAY, WOODBRIDGE, VIRGINIA 22191 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, with power of sale, the following described property located in the County of Prince William, State of Virginia:

Lot 35 of thesubdivision of Section 1, IRONGATE, as shown on plat thereof recorded with Deed of Dedication in Deed Book 435 at Page 304 among the aforesaid county land records.

Subject to all covenants, conditions, restrictions, reservations and to party wall rights, as contained in the deeds forming the chain of title to the subject property.

And being the same property conveyed to Grantors herein by deed of even date herewith and being recorded immediately prior hereto.

EXHIBIT NO. 2
PLI 4 DEF COMI
CASE NO: Chy 13246
DATE 2-27 1980
JUDGE:

NOTICE: THE DEBT SECURED HEREBY IS SUBJECT TO CALL IN FULL OR THE TERMS THEREOF BEING MODIFIED IN THE EVENT OF SALE OR CONVEYANCE OF THE PROPERTY CONVEYED.

which has the address of 8125 Irongate Way (Street) Manassas (City)

VA 22110 (State and Zip Code) (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Deed of Trust; and all of the foregoing, together with said property (or the leasehold estate if this Deed of Trust is on a leasehold) are herein referred to as the "Property";

TO SECURE to Lender (a) the repayment of the indebtedness evidenced by Borrower's note dated July 27, 1976 (herein "Note"), in the principal sum of THIRTY-ONE THOUSAND FIVE HUNDRED FIFTY AND 00/100 Dollars, with interest thereon, providing for monthly installments of principal and interest, with the balance of the indebtedness, if not sooner paid, due and payable on August 1, 2006; the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained; and (b) the repayment of any future advances, with interest thereon, made to Borrower by Lender pursuant to paragraph 21 hereof (herein "Future Advances").

Borrower covenants that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy insuring Lender's interest in the Property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any Future Advances secured by this Deed of Trust.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly installments of principal and interest are payable under the Note, until the Note is paid in full, a sum (herein "Funds") equal to one-twelfth of the yearly taxes and assessments which may attain priority over this Deed of Trust, and ground rents on the Property, if any, plus one-twelfth of yearly premium installments for hazard insurance, plus one-twelfth of yearly premium installments for mortgage insurance, if any, all as reasonably estimated initially and from time to time by Lender on the basis of assessments and bills and reasonable estimates thereof.

The Funds shall be held in an institution the deposits or accounts of which are insured or guaranteed by a Federal or state agency (including Lender if Lender is such an institution). Lender shall apply the Funds to pay said taxes, assessments, insurance premiums and ground rents. Lender may not charge for so holding and applying the Funds, analyzing said account or verifying and compiling said assessments and bills, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. Borrower and Lender may agree in writing at the time of execution of this Deed of Trust that interest on the Funds shall be paid to Borrower, and unless such agreement is made or applicable law requires such interest to be paid, Lender shall not be required to pay Borrower any interest or earnings on the Funds. Lender shall give to Borrower, without charge, an annual accounting of the Funds showing credits and debits to the Funds and the purpose for which each debit to the Funds was made. The Funds are pledged as additional security for the sums secured by this Deed of Trust.

If the amount of the Funds held by Lender, together with the future monthly installments of Funds payable prior to the due dates of taxes, assessments, insurance premiums and ground rents, shall exceed the amount required to pay said taxes, assessments, insurance premiums and ground rents as they fall due, such excess shall be, at Borrower's option, either promptly repaid to Borrower or credited to Borrower on monthly installments of Funds. If the amount of the Funds held by Lender shall not be sufficient to pay taxes, assessments, insurance premiums and ground rents as they fall due, Borrower shall pay to Lender any amount necessary to make up the deficiency within 30 days from the date notice is mailed by Lender to Borrower requesting payment thereof.

Upon payment in full of all sums secured by this Deed of Trust, Lender shall promptly refund to Borrower any Funds held by Lender. If under paragraph 18 hereof the Property is sold or the Property is otherwise acquired by Lender, Lender shall apply, no later than immediately prior to the sale of the Property or its acquisition by Lender, any Funds held by Lender at the time of application as a credit against the sums secured by this Deed of Trust.

3. Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraphs 1 and 2 hereof shall be applied by Lender first in payment of amounts payable to Lender by Borrower under paragraph 2 hereof, then to interest payable on the Note, then to the principal of the Note, and then to interest and principal on any Future Advances.

4. Charges; Liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the payee thereof. Borrower shall promptly furnish to Lender all notices of amounts due under this paragraph, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Deed of Trust; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

5. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Deed of Trust.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All premiums on insurance policies shall be paid in the manner provided under paragraph 2 hereof or, if not paid in such manner, by Borrower making payment, when due, directly to the insurance carrier.

All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments. If under paragraph 18 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Deed of Trust immediately prior to such sale or acquisition.

6. Preservation and Maintenance of Property; Leaseholds; Condominiums; Planned Unit Developments. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Deed of Trust is on a leasehold. If this Deed of Trust is on a unit in a condominium or a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration or covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents. If a condominium or planned unit development

rider is executed by Borrower and recorded together with this Deed of Trust, the covenants and agreements of such rider shall be incorporated into and shall amend and supplement the covenants and agreements of this Deed of Trust as if the rider were a part hereof.

7. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. If Lender required mortgage insurance as a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law. Borrower shall pay the amount of all mortgage insurance premiums in the manner provided under paragraph 2 hereof.

Any amounts disbursed by Lender pursuant to this paragraph 7, with interest thereon, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this paragraph 7 shall require Lender to incur any expense or take any action hereunder.

8. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

9. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Deed of Trust such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in paragraphs 1 and 2 hereof or change the amount of such installments.

10. Borrower Not Released. Extension of the time for payment or modification of amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successors in interest.

11. Forbearance by Lender Not a Waiver. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Deed of Trust.

12. Remedies Cumulative. All remedies provided in this Deed of Trust are distinct and cumulative to any other right or remedy under this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

13. Successors and Assigns Bound; Joint and Several Liability; Captions. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 17 hereof. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

14. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

15. Uniform Deed of Trust; Governing Law; Severability. This form of deed of trust combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property. This Deed of Trust shall be governed by the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and the Note are declared to be severable.

16. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

17. Transfer of the Property; Assumption. If all or any part of the Property or an interest therein is sold or transferred by Borrower without Lender's prior written consent, excluding (a) the creation of a lien or encumbrance subordinate to this Deed of Trust, (b) the creation of a purchase money security interest for household appliances, (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Deed of Trust to be immediately due and payable. Lender shall have waived such option to accelerate if, prior to the sale or transfer, Lender and the person to whom the Property is to be sold or transferred reach agreement in writing that the credit of such person is satisfactory to Lender and that the interest payable on the sums secured by this Deed of Trust shall be at such rate as Lender shall request. If Lender has waived the option to accelerate provided in this paragraph 17, and if Borrower's successor in interest has executed a written assumption agreement accepted in writing by Lender, Lender shall release Borrower from all obligations under this Deed of Trust and the Note.

If Lender exercises such option to accelerate, Lender shall mail Borrower notice of acceleration in accordance with paragraph 14 hereof. Such notice shall provide a period of not less than 30 days from the date the notice is mailed within which Borrower may pay the sums declared due. If Borrower fails to pay such sums prior to the expiration of such period, Lender may, without further notice or demand on Borrower, invoke any remedies permitted by paragraph 18 hereof.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

18. Acceleration; Remedies. Except as provided in paragraph 17 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to acceleration shall mail notice to Borrower as provided in paragraph 14 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than 30 days from the date the notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the non-existence of a default or any other defense of Borrower to acceleration and sale. If the breach is not cured on or before the date specified in the notice, Lender at Lender's option may declare all of the sums secured by this Deed of Trust to be immediately due and payable without further demand and may invoke the power of sale and any other remedies permitted by applicable law. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 18, including, but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender or Trustee shall give to Borrower a copy of a notice of sale in the manner prescribed by applicable law. Trustee shall give public notice of sale by advertising the time, place and terms of sale once a week for three successive weeks in a newspaper published or having general circulation in the county or city in which the Property or some portion thereof is located, and by such additional or different form of advertisement as the Trustee may deem advisable, if any. Trustee may sell the Property on the fifteenth day after the first advertisement or any day thereafter. Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of the Property by public announcement at the time and place of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold with special warranty of title. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements made therein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, Trustee's fees of 2.50 % of the gross sale price, reasonable attorney's fees and costs of title evidence; (b) to the discharge of all taxes, levies and assessments on the Property, if any, as provided by applicable law; (c) to all sums secured by this Deed of Trust; and (d) the excess, if any, to the person or persons legally entitled thereto, including, if any, holders of liens inferior to this Deed of Trust in order of their priority, provided that Trustee has actual notice of such liens. Trustee shall not be required to take possession of the Property prior to the sale thereof or to deliver possession of the Property to the purchaser at such sale.

19. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to the earlier to occur of (i) the fifth day before sale of the Property pursuant to the power of sale contained in this Deed of Trust or (ii) entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust, the Note and notes securing Future Advances, if any, had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust and in enforcing Lender's and Trustee's remedies as provided in paragraph 18 hereof, including, but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

20. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 18 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 18 hereof or abandonment of the Property, Lender, in person, by agent or by judicially appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by Lender or the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

21. Future Advances. Upon request of Borrower, Lender, at Lender's option prior to release of this Deed of Trust, may make Future Advances to Borrower. Such Future Advances, with interest thereon, shall be secured by this Deed of Trust when evidenced by promissory notes stating that said notes are secured hereby. At no time shall the principal amount of the indebtedness secured by this Deed of Trust, not including sums advanced in accordance herewith to protect the security of this Deed of Trust, exceed the original amount of the Note plus US $ none.....

22. Release. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to release this Deed of Trust and shall surrender all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall release this Deed of Trust without charge to Borrower. Borrower shall pay all costs of recordation, if any.

23. Substitute Trustee. Lender may from time to time in Lender's discretion remove Trustee and appoint a successor trustee to any Trustee appointed hereunder. Without conveyance of the Property, the successor trustee shall succeed to all the title, power and duties conferred upon the Trustee herein and by applicable law.

24. Identification of Note. The Note is identified by a certificate on the Note executed by any Notary Public who certifies an acknowledgement hereto.

IN WITNESS WHEREOF, Borrower has executed and sealed this Deed of Trust.

Albert B. Lipps (Seal)
—Borrower

Judith W. Lipps (Seal)
—Borrower

STATE OF VIRGINIA, PRINCE WILLIAM County ss:

The foregoing instrument was acknowledged before me this 27th day of June, 1976
(date)

by Albert B. Lipps and Judith W. Lipps
(person acknowledging)

My Commission expires: 1/9/77

Notary Public

Recorded with certificate annexed Aug. 4 1976
at 10:47 A.M. Prince William County, Virginia.

Teste: Clerk

(Space Below This Line Reserved For Lender and Recorder)

TRUSTEE'S SALE OF
LOT 35, SECTION I, IRONGATE SUBDIVISION,

PRINCE WILLIAM COUNTY, VIRGINIA

In Execution of a Deed of Trust from ALBERT B. LIPPS and JUDITH W. LIPPS, dated July 27, 1976 recorded in the Clerk's Office of the Circuit Court of Prince William County, Virginia, in Deed Book 858, at Page 487, the undersigned Trustee will offer for sale at public auction in front of the General District Courthouse, Prince William County, Virginia, on January 28, 1980 at 10:30 (a. ~~p~~.) m. the following described real estate:

Lot 35, Section I, Irongate Subdivision, Prince William County, Virginia

EXHIBIT NO. 3
PLI & DEFI COMM
CASE NO. Chy. 13216
DATE 2-27 19 80
JUDGE:

Tax Map Number: 113-05-35

Street Address: 8325 Irongate Way
Manassas, Virginia 22110

The sale will be made subject to recorded and unrecorded mechanic's liens; and further subject to all easements, conditions, restrictions and agreements as they may lawfully apply to the property or any part thereof.

TERMS OF SALE: A cash deposit of 10% of the sales price. certified or Bank Cashier's check will be required of the successful bidder at the time of the sale with the balance due within ten days from the date of sale. Upon default by the Purchaser in the settlement of the sale, the aforesaid deposit shall be forfeited and applied to the cost and expenses of sale and the Trustee's compensation authorized by the Deed of Trust and the law in such cases made and provided. In the event of default by the Purchaser, the Trustee reserves the right to resell the property at the risk of the defaulting Purchaser in accordance

with the Deed of Trust. Notwithstanding the foregoing, the Trustee reserves the right to waive the requirements of such deposit.

All cost of conveyancing, which shall be by Special Warranty, examination of title, recording charges, notary fees, settlement fees, including preparation of Deed, to be at the cost of the Purchaser. Property will be sold in "as is" condition without warranty of any kind.

In the event the Trustee deems it best for any reason to postpone or continue the sale from time to time, he may do so in accordance with the terms of the Deed of Trust and thereafter may sell the property as therein provided.

Written notice of the Trustee's Sale is required by Section 55-59.1 of the 1950 Code of Virginia, as amended, has been given by certified mail to the Grantors of the Deed of Trust at their last known address all according to the records of the Noteholder.

TRUSTEE:
FIRST AMERICAN SERVICE CORPORATION

FOR INFORMATION CONTACT:

/S/

DANIEL H. BORINSKY, Attorney for Trustee
Nageotte, Borinsky & Zelnick
14908 Jefferson Davis Highway
Woodbridge, Virginia 22191
(703) 491-4136
(703) 550-9291

FIRST AMERICAN SAVINGS
and Loan Association

12 December 1979

Sandmar Associates, Inc.
5214 Claridge Court
Fairfax, Va. 22032

REFERENCE: L-1684-2

Gentlemen:

Enclosed is your check for $334.00 as payment on the above referenced loan.

We are not accepting this payment in accordance with the letter from our attorney to your office regarding the acceleration of this loan.

If you have any questions, please contact this office.

Sincerely,

Grace Ward

GRACE WARD
Collections Department

EXHIBIT NO. 4
PLT DEFT COMT
CASE NO. Chy. 13244
DATE 2-27 1980
JUDGE:

ENCL: Check

SANDMAR ASSOCIATES, INC.
5214 CLARIDGE COURT PH. 323-7795
FAIRFAX, VIRGINIA 22032

1078

December 4 1979 68-3560 560 08

PAY TO THE ORDER OF 1st American Savings and Loan Association $ 334.00

Three Hundred Thirty Four and No/100 DOLLARS

NBF
The National Bank of Fairfax
FAIRFAX, VIRGINIA 22030

FOR Loan No-5004-501684-2

⑈00001078⑈ ⑆056003569⑆ ⑈501447 6⑈

Other offices: Manassas, Virginia Beach, Fredericksburg
MEMBER FSLIC

SELLER'S CONTRACT AND PAYMENT AUTHORIZATION

RED CARPET® **WALL TO WALL™ PROTECTION PLAN**

This Plan is administered by
American Home Shield Corporation
National Headquarters
1811 Santa Rita Road • Pleasanton, CA 94566
Toll Free — (California) (800) 642-2471
(Outside California) (800) 227-1194

HOW THIS PLAN WORKS

As an additional benefit for listing with me and RED CARPET® the following coverage shall be provided:

- Starting 15 days from 4/2/79 (Today's Date), if something should go wrong with the specifically covered systems of this house (see other side for specific details and conditions) AMERICAN HOME SHIELD CORPORATION (hereinafter "American Home Shield®") on behalf of RED CARPET CORPORATION OF AMERICA, will repair or replace them for you, the seller, until date of closing. Cost for repair or replacement is limited to a $25 service fee per trade-call.
- Starting on the date of closing, and for one full year thereafter, if something should go wrong with the following systems:
  The Central Heating, Plumbing, Electrical, and Central Air Conditioning Systems, the Hot Water Tank and Major Appliances (specifically, the Oven, Range, Built-in Dishwasher, Built-in Trash Compactor and Garbage Disposal)
  AMERICAN HOME SHIELD®, will repair or replace them for the Buyer, subject to a service fee per trade call (see sample RED CARPET® WALL TO WALL™ PROTECTION PLAN Buyer's Contract for specific details and conditions).
- If your home does not sell or a closing does not take place, there is no additional cost to you, the seller, for any work performed.

SELLER(S) & MAIN DWELLING INFORMATION

Lipps (Last Name)	Albert (First Name)	B (Middle Initial)	(Last Name)	(First Name)	(Middle Initial)
8325 Irongate Way (Address No. Street)					
Manassas (City)	VA (State)		22110 (Zip)	(703) 361 (Area Code)	-1682 (Phone)
10 (Age)			38,500 (Approximate Value)		

MAIN DWELLING CHARACTERISTICS

(Check Appropriate Items)

YES NO AGE

☑ ☐ 104 Central Heating System: ☐ Hot Water ☑ Gas Fired ☐ Steam ☐ Radiant ☐ Warm Air ☐ Electric ☐ Oil Fired ☐ Other

☑ ☐ 104 Central Air Conditioning System:

☑ ☐ 4 yrs Domestic Hot Water: ☐ Tank ☐ Oil Fired ☐ Instant Tank ☑ Natural Gas ☐ Propane ☐ Electric _____ Capacity Gallons

APPLIANCES: (Check appropriate items and give their age)
☑ 10 Oven ☑ 10 Range ☑ 10 Built-in Dishwasher
☐ _____ Built-in Trash Compactor ☑ 10 Garbage Disposal

If a portable dishwasher or trash compactor is left with the property, it will be covered only if the following information is provided:
DISHWASHER: Make: Westinghouse Model# Built-in Serial# _____
TRASH COMPACTOR: Make _____ Model# _____ Serial# _____

I, the Seller, hereby declare that the above items, as well as the plumbing and electrical systems, are working properly, without defect, and will be in good order at close of sale or close of escrow, except as follows: _____

Note: When those items listed immediately above are repaired, and seller sends a photocopy of repair bill from a licensed contractor to American Home Shield®, those items will be covered for the Buyer after closing.

Any intent to defraud American Home Shield® may void all or part of this contract. The issuance of this contract is expressly conditioned upon the accuracy of the foregoing statement. The Broker accepts no liability or other responsibility for the performance of any services pursuant to this Protection Plan. Neither the Broker nor any Representative thereof will receive any part of any fee received by American Home Shield®.

PAYMENT AUTHORIZATION

The Seller shall pay or shall direct and authorize the fiduciary (Escrow Officer, Title Officer or Attorney), handling the closing of the sale of the property, to pay to American Home Shield® the sum of:

(Check One)
☑ $250.00 for a single family dwelling
☐ $375.00 for a duplex unit
☐ $500.00 for a triplex unit
☐ $625.00 for a fourplex unit

Seller hereby authorizes this fee to be paid to American Home Shield® immediately upon close of sale or close of escrow of the subject property from the proceeds of the sale.

Albert B. Lipps (Seller)

AMERICAN HOME SHIELD CORPORATION

By David Smith (President)

Expiration Date of Listing 6/30/79

Listing Agent Michael J. Gibb (Please Print)

Seller

Red Carpet Sentry Realty (Real Estate Company Name)

12015 (AHS Realtor Code Number)

Manassas 361-8286 (Branch Office Name & Phone Number)

WHITE COPY — A.H.S. YELLOW COPY — Escrow/Attorney PINK COPY — Customer GOLDENROD COPY — Broker

©American Home Shield Corporation (3/1/78) EXHIBIT NO. 5 RC002 Each Red Carpet Office is Independently Owned and Operated

PLAINTIFF'S COMPLAINT

DATE 2-27 1980

JUDGE: _____

120

Seller's Contract for

RED CARPET® WALL TO WALL™ PROTECTION PLAN

SERVICES

On behalf of Red Carpet Corporation of America, American Home Shield® (hereinafter referred to as "The Company") will repair or, if necessary, replace defective parts and components located within the interior of the Main Dwelling as follows:

_____ Seller's Initial PLUMBING SYSTEM: All leaks and breaks in the domestic water, gas, drain, waste and vent line piping, to the extent that the same are located within the interior of the main dwelling; assembly parts within water closet tank, including ballcock assembly, handle and trip lever, flush ball, flapper, float ball and arm, fill tube, overflow tube, lift wire, ball guide and bracket; supply valves and risers leading to sinks, lavatories, and water closets; main water supply valves within the interior of the main dwelling. In addition the Company will clear all drain and waste line stoppages (provided that the stoppage is caused by an obstruction located in a drain or waste line within the interior of the main dwelling.

PLUMBING FIXTURES, FAUCETS, TUB AND/OR SHOWER VALVES, SHOWER ENCLOSURES, SHOWER BASE PANS, WATER SOFTENERS, EXCESSIVE OR INADEQUATE WATER PRESSURE, WELL PUMP, HOLDING TANK, AND SEWAGE EJECTOR PUMP ARE EXCLUDED FROM THIS PLAN.

_____ Seller's Initial HOT WATER HEATER (Electric, Gas and Oil Fired): All gas control valves, thermostats, elements, burner and pilot assemblies, burner blower motors and blower wheels, fuel units, static discs, air tubes, nozzles and nozzle lines, line filters and strainers, impellers, ignition wires, electrodes, terminals and transformers pressure and temperature relief valves, thermocouples, draincocks, flue pipe and fittings, all small plumbing fittings, all wiring and electrical connections, and the water heater tank.

_____ Seller's Initial ELECTRICAL SYSTEM: All electrical switches, electrical receptacles (outlets), electrical circuits (including repair of electrical short circuits), circuit breaker panel, all breakers, fuse boxes and outside receptacles attached to the main dwelling.

LIGHTING FIXTURES, DOOR BELLS AND CHIMES, GARAGE DOOR OPENERS, INTERCOM SYSTEMS, BURGLAR OR FIRE ALARMS AND ELECTRICAL CIRCUIT OVERLOADS ARE EXCLUDED FROM THIS PLAN.

CONDOMINIUM, DUPLEX, TRIPLEX AND FOURPLEX UNITS: Where the subject property at the address listed in this Plan is a condominium, duplex, triplex, or fourplex unit, the liability of the Company is limited to repairs or replacements which can be performed within the confines of the individual unit.

THIS PLAN SPECIFICALLY (BUT NOT BY WAY OF LIMITATION) EXCLUDES SERVICE AND/OR REPAIR OR REPLACEMENT OF COMMON FACILITIES, SYSTEMS, OR EQUIPMENT.

TERMS AND CONDITIONS

CONDITIONS: This Plan does not cover servicing, maintenance, repair or replacement of any parts or components of utility systems or equipment which are not specifically enumerated in this Plan or which were not in satisfactory operating condition as set forth in paragraph 2 (Main Dwelling Characteristics) on reverse side.

The Company will provide all service pursuant to this Plan within a reasonable time after telephone request for such service, normally within 48 hours. Requests for service will be accepted by the Company 24 hours per day, 365 days per year. No reimbursement or payment shall be made to Homeowner for any expenses in connection with employing outside contractors or the purchase of new equipment or the repair of existing equipment or for any other expense whatsoever.

This Plan includes only repairs, replacements and services, and only those made necessary by normal operations and normal wear and tear. The Company has the sole option of determining whether a malfunction will be corrected by repair or replacement. The Homeowner shall give the Company notice within a reasonable time after any operating failure, of the need of service, and shall endeavor to protect the property from further damage until repairs are made.

_____ Seller's Initials THE SELLER SHALL PAY TO THE COMPANY $25.00 FOR EACH TRADE CALL, WHICH PAYMENT SHALL BE MADE ON OR BEFORE COMPLETION OF THAT SERVICE.

The Company will use its best efforts to provide replacement parts (where necessary and available) of like quality to the original parts, provided that the Company will not be liable for failure to match exactly the type and color of replacement parts or to make improvements to original equipment, facilities and/or systems.

This Plan does not apply to restoration of openings of walls, floors or ceilings. Where such openings are required to perform covered services, the Company will restore walls and ceilings to a "rough" finish condition. Any repainting, wallpapering, wall paneling, staining, floor covering or ceramic tile replacements are excluded from this Plan.

The Company will not be obligated to incur an expense in excess of $200 to repair or replace breaks or leaks in the plumbing, domestic water and/or radiant heating coil lines in or below concrete floor or slab.

When repairs or replacements included in this Plan are affected by building or zoning codes in such a way that restoration to original condition is not permitted, and/or the code requires more costly material or additional work, the Company will have no obligation for the additional material, labor and expense. When code corrections are necessary prior to the repair or replacement, the owner of the dwelling described herein shall be responsible for making the correction, and the Company will have no obligation to perform under the terms of this Plan until the corrections are made. Nor shall the Company have any obligations to perform services if any required permits cannot be obtained because of building or zoning code violations, until the violations have been removed. Where equipment, facilities or systems covered by this Plan are not reasonably accessible for repairs, Homeowner shall bear the cost of gaining access to and closing access from such equipment, facilities or systems.

This Plan does not cover service, repairs or replacements required as a result of inadequate power supply, power failure, wars, floods, lightning, earthquake, storm, freeze-up, fire, smoke, electrical failure, riots, vandalism, neglect or misuse, theft, accidents, acts of God, external causes or other than normal usage and normal wear and tear of the equipment, facilities or systems enumerated in this Plan.

The Company will not be liable for any consequential or secondary damages or other conditions resulting from malfunction of the parts, systems, repairs or replacements described in this Plan or from delays or failure to render service due to conditions beyond its control, including labor difficulties or unavailability of parts. The Company will not be responsible for loss or damage alleged to be caused directly or indirectly by its service or by the timeliness of rendition of its services.

Unless otherwise specified herein, this Plan specifically (but not by the way of limitation) excludes service and/or repairs or replacement of attic fans, exhaust fans, filters, lawn sprinklers, pools, air conditioners and the adequacy or capacity of any component of the home.

TERMINATION: This Plan shall be void if, before or after the request for rendition of service, Seller has willfully concealed or misrepresented any material facts or circumstances relating to the condition of the home or its utility system.

This Plan shall, at the option of the Company, be void in the event that any of the equipment and utilities included hereunder is serviced by any person other than the Company.

The obligation of the Company to render or effect repairs shall terminate in the event that Seller alters, modifies or adds to the structure and systems covered by this Plan, unless Seller has first advised the Company of any proposed alteration, modification or addition, and the Company has given its written agreement to provide service under this Plan accordingly.

_____ Seller's Initial **Oven, Range, Garbage Disposal, Built-in Dishwasher, Built-in Trash Compactor, Central Heating Systems and Central Air Conditioning Systems are not part of sellers coverage, but are covered for the buyer for 1 full year from date of closing.**

YOUR RED CARPET® WALL TO WALL™ PROTECTION PLAN IS SPECIFIC WITH REGARD TO THE COVERAGE PROVIDED. BEFORE CALLING THE COMPANY, READ THE PORTION OF YOUR CONTRACT WHICH RELATES TO THE NATURE OF YOUR PROBLEM. IF YOUR PROBLEM IS COVERED BY THIS PLAN, PLEASE CALL:

Toll Free — (800) 227-1194 (National) • (800) 642-2471 (California)

Form Approved
OMB No. 63-R1501

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

DISCLOSURE/SETTLEMENT STATEMENT

B. TYPE OF LOAN:
1. ☐ FHA 2. ☐ FMHA 3. ☐ CONV. UNINS.
4. ☐ VA 5. ☐ CONV. INS.

6. FILE NUMBER
7. LOAN NUMBER
8. MORTG. INS. CASE NO.

If the Truth-in-Lending Act applies to this transaction, a Truth-in-Lending statement is attached as page 3 of this form.

C. NOTE: This form is furnished to you prior to settlement to give you information about your settlement costs, and again after settlement to show the actual costs you have paid. The present copy of the form is:

☐ ADVANCE DISCLOSURE OF COSTS. Some items are estimated, and are marked "(e)". Some amounts may change if the settlement is held on a date other than the date estimated below. The preparer of this form is not responsible for errors or changes in amounts furnished by others.

☐ STATEMENT OF ACTUAL COSTS. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in totals.

D. NAME OF BORROWER	E. SELLER	F. LENDER
Albert E. Lipps Judith W. Lipps	James T. Webb Anita E. Webb	First American Savings and Loan Association

G. PROPERTY LOCATION	H. SETTLEMENT AGENT	I. DATES	
		LOAN COMMITMENT	ADVANCE DISCLOSURE
Lot 15, Section I, IRON GATE	Lonas and Weber		
	PLACE OF SETTLEMENT	SETTLEMENT	DATE OF PRORATIONS IF DIFFERENT FROM SETTLEMENT
	Manassas, Virginia	7/27/76	

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract sales price	33,250.00	401. Contract sales price	[illegible]
102. Personal property		402. Personal property	
103. Settlement charges to borrower (from line 1400, Section L)	1,446.[illegible]	403.	
104.		404.	
105.		Adjustments for items paid by seller in advance:	
Adjustments for items paid by seller in advance:		405. City/town taxes to	
106. City/town taxes to		406. County taxes to	
107. County taxes to		407. Assessments to	
108. Assessments to		408. to	
109. to		409. to	
110. to		410. to	
111. to		411. to	
112. to		420. GROSS AMOUNT DUE TO SELLER	[illegible]
120. GROSS AMOUNT DUE FROM BORROWER:	34,696.[illegible]	*NOTE: The following 500 and 600 series sections are not required to be completed when this form is used for advance disclosure of settlement costs prior to settlement.*	
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	500.[illegible]	501. Payoff of first mortgage loan	
202. Principal amount of new loan(s)	33,[illegible]	502. Payoff of second mortgage loan	
203. Existing loan(s) taken subject to		503. Settlement charges to seller (from line 1400, Section L)	[illegible]
204.		504. Existing loan(s) taken subject to	
205.		505.	
Credits to borrower for items unpaid by seller:		506.	
206. City/town taxes to		507.	
207. County taxes 7/[illegible] to 7/27/76	[illegible]	508.	
208. Assessments to		509.	
209. [illegible] to	1,363.90	Credits to borrower for items unpaid by seller:	
210. to		510. City/town taxes to	
211. to		511. County taxes to	
212. to		512. Assessments to	
220. TOTAL AMOUNTS PAID BY OR IN BEHALF OF BORROWER	33,389.7[illegible]	513. to	
300. CASH AT SETTLEMENT REQUIRED FROM OR PAYABLE TO BORROWER:		514. [illegible] to	
301. Gross amount due from borrower (from line 120)	34,696.0[illegible]	515. to	
302. Less amounts paid by or in behalf of borrower (from line 220)	33,389.7[illegible]	520. TOTAL REDUCTIONS IN AMOUNT DUE TO SELLER:	[illegible]
303. CASH ☐ REQUIRED FROM OR ☐ PAYABLE TO BORROWER:	1,306.35	600. CASH TO SELLER FROM SETTLEMENT:	
		601. Gross amount due to seller (from line 420)	[illegible]
		602. Less total reductions in amount due to seller (from line 520)	[illegible]
		603. CASH TO SELLER FROM SETTLEMENT	[illegible]

[illegible] liens payoff of [illegible] trust

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DISCLOSURE/SETTLEMENT STATEMENT

L. SETTLEMENT CHARGES	PAID FROM BORROWER'S FUNDS	PAID FROM SELLER'S FUNDS
700. SALES BROKER'S COMMISSION based on price $ 35,250.00 @ 6 %		
701. Total commission paid by seller		
Division of commission as follows:		
702. $ to		
703. $ to		
704.		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN.		
801. Loan Origination fee %		
802. Loan Discount		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's inspection fee		
806. Mortgage Insurance application fee to		
807. Assumption/refinancing fee		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE.		
901. Interest from 7/27 @ $ /day		
902. Mortgage insurance premium for mos. to		
903. Hazard insurance premium for yrs. to		
904. yrs. to		
905.		
1000. RESERVES DEPOSITED WITH LENDER FOR:		
1001. Hazard insurance mo. @ $ / mo.		
1002. Mortgage insurance mo. @ $ / mo.		
1003. City property taxes mo. @ $ / mo.		
1004. County property taxes 2 mo. @ $ / mo.		
1005. Annual assessments mo. @ $ / mo.		
1006. mo. @ $ / mo.		
1007. mo. @ $ / mo.		
1008. mo. @ $ / mo.		
1100. TITLE CHARGES:		
1101. Settlement or closing fee to		
1102. Abstract or title search to		
1103. Title examination to and closing		
1104. Title insurance binder to		
1105. Document preparation to		
1106. Notary fees to		
1107. Attorney's Fees to		
(includes above items No.)		
1108. Title insurance to		
(includes above items No.)		
1109. Lender's coverage $		
1110. Owner's coverage $		
1111.		
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. Recording fees: Deed $ Mortgage $10.00 Releases $ 1.00	10.00	1.00
1202. City/county tax/stamps: Deed $ 6.65 Mortgage $ 15.80	22.45	
1203. State tax/stamps: Deed $ 49.95 Mortgage $ 47.40	97.35	
1204. Grantor Tax		
1300. ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to		
1302. Pest inspection to		
1303.		
1304.		
1305.		
1400. TOTAL SETTLEMENT CHARGES (enter on lines 103 and 503, Sections J and K)		

NOTE: Under certain circumstances [illegible] permitted to waive the 12-day period which must normally occur between [illegible] closure and settlement. [illegible] waiver, exclusive of those authorized under the regulations of the Department of Housing and Urban Development [illegible] form is used as a settlement statement [illegible]

[illegible]

Settlement Attorney

Better Homes Realty, Inc.

DATE 21 July 197

TO: First American Savings & Loan

13448 Jefferson Davis Hwy

Woodbridge, Va. 22191

Attn: Mortgage Loan Department

Reference Loan No. 5-004-501684-2 Address 8325 Irongate Way, Manassas, Va.

Dear Sirs:

Please send the following supplementary data relative to the existing financing on my/our property located at 8325 Irongate Way, Manassas, Va.

to: BETTER HOMES REALTY, INC. 2936 Chain Bridge Rd.

Oakton, Va. 22124 Attn: Juanita Wilson

SUPPLEMENTARY DATA ON EXISTING FIRST TRUST

First Trust Balance 31,159.92 as of July 1 19 78

Interest rate 9 1/2 % Monthly payment total $ 329.72 Principal & Int. $ 265.30

Date loan matures June 2016

Taxes 285.58 Semi-annually Insurance 99.72 annually

Prepayment Penalty Yes Escrow Amount 48.41

Is First Trust Assumable By written approval of lender Qualified Buyer must apply Assumption Fee $ 1% of Loan Balance.

Does First Trust have interest rate Escalation Clause? Yes

First Trust is a Conventional X FHA 203 ____ FHA 222 ____ VA ____ Other ____

Does Lender require notification of Pay off? Yes - Closing Attorney must write for Pay-off figures.

EXHIBIT NO. 7
PLT DEFT COMM
CASE NO. Chy 13244
DATE 2-27 1980
RUDE

SUPPLEMENTARY DATA ON EXISTING SECOND TRUST (If any)

Balance $ _____ Interest rate _____ %

Due Date _____ 19 ____ Monthly payments _____

Is Trust Assumable? _____

Payments made to: _____

Address of Holder of Note _____

_____

A self-addressed stamped envelope is enclosed for your use.

FOR TH[illegible]ER:

Above Supplementary Data provided by:

Signature

Name & Title 8/.178

Rev. 7/74

Yours truly,

Homeowner's name (Printed)

ALBERT B. L[illegible]

Homeowner's signature

ROBERT E. SWAN
ATTORNEY AT LAW

10604 WARWICK AVENUE, FAIRFAX, VIRGINIA, 22030
TELEPHONE 591-3100

In Account With Albert B. Lipps & Judith W. Lipps ....May.10....., 1979.

Contract Sale: Lot 35, Sec. 1, Irongate, Prince William County, Va.

To: Sandman Associates, Inc.

Sale Price	5,400.00		
	30,966.97		
	36,366.97		$36,366.97
Existing First Trust - Balance after 5/1/79 payment		$30,966.97	
Interest 5/1/79 to 5/10/79		81.72	
Escrow Balance assigned			336.13
Real Estate taxes (1/1/79 to 5/10/79)		206.09	
Insurance pro-rated separately			
Irongate Assn. dues pd. thru 6/30/79 (5/10 to 6/30/79)			15.84
Termite Inspection		20.00	
Realtor's Commission - 5% to Sentry Realty, Inc.		1,818.35	
Preparation of Deed		50.00	
Settlement Fee		75.00	
To be Escrowed with Escrow Agent:			
State Grantor's Tax	$36.50		
Release of Trust	50.00		
	86.50	86.50	
Proceeds		3,414.31*	
* $250.00 to be deducted from the proceeds for payment to American Home Shield for Warranty Plan		36,718.94	36,718.94

We hereby approve the above statement and authorize disbursements shown therein and certify that we have received a copy hereof.

Albert B. Lipps

Albert B. Lipps

Judith W. Lipps

Judith W. Lipps

EXHIBIT NO. 8
PLT DEF COMM T
CASE NO. Chy13214
DATE 2-27 1980
JUDGE

Please Rush

RECEIVED APR 13 1979

DATE April 11, 1979

RE: Albert and Judith Lipps

8325 Irongate Way

Loan # 5-004-5016842

TO 1st American Savings and Loan

9514 Center Street

Manassas, VA

Gentlemen:

Please be advised that the above-referenced property now owned by us has been listed by Red Carpet-Sentry Realty, Inc., for sale.

We anticipate that your mortgage will be paid in full. In the event your deed of trust requires advance notice of payoff, please consider this letter as notification of intent to refinance, effective immediately. We would appreciate knowing if there are any restrictions of record against assumption of the present loan.

Would you be kind enough to furnish Red Carpet-Sentry Realty, Inc., with current information on the existing trust, along with a copy of the plat for the captioned premises. Please complete this form and return it to them in the enclosed self-addressed envelope. The copy is for your records.

Sincerely,

x Albert B Lipps

Loan Balance $ 30,986.97 Interest Rate 9.5% % Type of Loan Conventional

Payment-princ. + int. $ 265.30 Payment-PITI $ 329.00

Escrow Balance $ 336.13 Pre-payment Penalty $ 2% of unpaid balance if property is refinanced through another lender. None if property is sold and title passes

Loan (MAY MAY NOT) be assumed. Conditions of assumption Buyer must qualify and there will be no rate adjustment.

Are these required on Assumptions? Credit Report Yes

Loan Application Yes

Amount of Fee 1% of unpaid balance

Employment Varification Yes

EXHIBIT NO. 9

PL ✓ DEF ( ) COM ( )

CASE NO. Chy 13246

DATE 2-27 19 80

JUDGE:

FIRST AMERICAN SAVINGS
and Loan Association

Date: January 28, 1980

RE: Jon A. Sousa

Gentlemen,

This is to advise you that the points to be charged on the above referenced loan are:

Seller :	7
Purchaser :	1
Type of Loan :	FHA
Interest Rate :	11.50
Sales Price :	40,000.00
Loan Amount :	37,100.00

1. This commitment will be effective until April 11, 1980

2. This commitment [illegible] to the approval of the loan by [illegible] Veterans Administration [illegible] the Federal Housing Administration.

3. Should the [illegible] change, this commitment is [illegible] and Void.

Sincerely,

George Baker
Mortgage Loan Consultant

cc: Mr. & Mrs. Albert Lipps
Mr. & Mrs. Jon M. Sousa
Bill DiLorite

EXHIBIT NO. 10
PLT DEF COMP
CASE NO. Chy 1324
DATE 2-27 1980
JUDGE:

11448 Jefferson [illegible]

ROBERT E. SWAN
ATTORNEY AT LAW
10604 WARWICK AVENUE, FAIRFAX, VIRGINIA, 22030
TELEPHONE 591-3100

RECEIVED MAY 17 1979

May 15, 1979

First American Savings and Loan
9514 Center Street
Manassas, Virginia 22110

Re: Albert and Judith Lipps
8525 Irongate Way, Manassas, Va. 22110
Loan No. 5-004-5016842

Gentlemen:

Please be advised that this office represents the above parties, who have retained me to handle their property. A copy of Power-of-Attorney is enclosed.

Would you therefore kindly have your records reflect this address above, c/o Robert E. Swan, Attorney, for a mailing address regarding all notices and information for the above loan account.

Your cooperation is appreciated.

Sincerely,

Robert E. Swan

RES:dg

Encl.

SANDMAR ASSOC.
Gary Sherman — 525-9792
Joseph Brunelle — 569-6752

EXHIBIT NO. P
PLT DEF COM
CASE NO. Chy 13246
DATE 2-27 1980
JUDGE:

RE: Lot 35, Sec. 1, Irongate, Prince William County, Virginia
8325 Irongate Way

TO WHOM IT MAY CONCERN:

The undersigned record owners of the aforesaid property hereaby appoint Robert E. Swan, Attorney, as Attorney-in-fact to represent us in all matters pertaining to the aforesaid property. All notices, etc. should be directed to him.

Date: 5-10-79

Loan No._____

Albert B. Lipps

Judith W. Lipps

Judith W. Lipps

EXHIBIT NO. B
PLT DEF COMM
CASE NO. Chy. 13246
DATE 2-27 1980
JUDGE:

130

RECEIVED
JUL 16 1979

371
8
2968

June 11, 1979

First American Savings and Loan
13448 Jefferson Davis Hwy
Woodbridge, Va. 22191

Dear Sir:

This is in reference to our property at 8325 Irongate Way, Manassas, Va., 22110. All future correspondence is to be directed to the following attorney:

Robert E. Swan
10604 Warwick Ave.
Fairfax, Va. 22030

Thank you for your cooperation in this matter.

Sincerely,

Albert B. and Judith W. Lipps

EXHIBIT NO. C
FILED DEFT'S COMPL
CASE NO. CH 13246
DATE 2-27 1980
JUDGE