



North Carolina Case Law Update









September 5-7, 2013

North Carolina Case Law Update

2012/2013

DCNC

Mejorado v. CitiMortgage, Inc. 5

-  Borrower's Q/T Claim Survives Dismissal Motions
-  Divorce, Trailer and a Scoundrel Ex
-  Allegedly her signature a forgery – valid defense
-  CitiMortgage pleaded 3 year SOL fraud ...
 -  NC Q/T SOL doesn't run while plaintiff in possession
-  Covenant of good faith and fair dealing
-  Court missed issue on power to 'strike' recordings
-  Bungled HAMP Modification didn't help

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NORTH CAROLINA SUPREME COURT

In re Foreclosure of Bass 8

 Court of Appeals Reversed on Holder Status

 Endorsement by Stamp Approved

 Burden of proof is on respondent to challenge

Falk v. Fannie Mae 12

 Foreclosure Priority case

 N.C.G.S. Sec. 45-37(b) Unconstitutional as applied

 Enacted after priority established

 Equitable subrogation denied

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NORTH CAROLINA SUPREME COURT

Blue Ridge Sav. Bank, Inc. v. Mitchell 17

 Foreclosure Sale 10% below FMV –

 No Defense to Deficiency

John Conner Construction, Inc. 18

 Is Purchaser an ‘Owner under 44A?

 Undecided

Minor v. Minor 18

 Adverse Possession – Jury Instructions

 If you claim all...prove all... or lose

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NORTH CAROLINA COURT OF APPEALS

Garrett v. Burris 18

 Common Law Marriage recognized if proved

 Controlling Texas law correctly cited...

 Texas law may have been interpreted incorrectly

 Affirmed *Per Curiam* by NCSC, 9A13, June 13, 2013

Erthal v. May 22









 Restrictive Covenants permit certain activities

 Charging fees is not prohibited 'Commercial Use'

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- *The Glens of Ironduff POA, Inc. v. Daly* 26
 - Developer's Road Construction Statute of Repose
 - "substantially completed"
 - when put use rather than when paved
- *Dallaire v. Bank of Am., N.A.,* 27
 - Lender's Fiduciary Relationship to Borrower
 - Refinance lien status error from title search
 - Footnoted that BOA ordered search from subsidiary
 - No summary judgment

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-  *Waterway Drive POA v. Town of Cedar Point* 27
 -  Question of acceptance of Offer of Dedication
 -  Evidentiary issue
 -  Powell Bill street maps not sufficient alone
 -  Competent evidence per *Tower Development Partners*
-  *TD Bank, N.A. v. Crown Leasing Partners* 28
 -  Proper Venue National Bank vs. Borrower Action
 -  County of residence of defendants.

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Ramey Kemp & Associates, Inc. 28

-  Proof of Last Furnishing in 44A Service Contract
-  Summary status report requested a year after last work
-  Reply not verified...on appeal

McCrann v. Pinehurst, LLC 29

-  Restrictive Covenants – Standing
-  Must be parties or successors in interest
-  No implied covenants

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➤ *Charles Schwab & Co., Inc. v. McEntee* 29

➤ Trust Beneficiary can't Intervene if PR defends

➤ Here, PR defended action and settled lawfully

➤ Beneficiary did “not allege...that its interest was not adequately represented by the PR...”

➤ *Wells Fargo v. Arlington Hills of Mint Hill* 30

➤ No Deficiency Defense for Guarantor

➤ N.C. G. S. § 45–21.36 applies only to:

➤ “the *mortgagor, trustor* or other *maker*...”

➤ “...whose property has been so purchased”

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- *Bissette v. Harrod* 31
 - Executory interest no basis for Express Trust
 - Based on attempt to circumvent CCR's
 - "If attempt fails, then deliver easement deed"
- *In re Foreclosure of Young* 32
 - Clerk's dismissal is Res Judicata in Ch.45 Foreclosure
 - Judicial foreclosure may still be available
- *RL Regi N.C., LLC v Moser* 32
 - PR's Authority limited by purposes in Will
 - PR can't pledge assets simply to continue business

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 *Russell v Donaldson* 33

 Short Term Rental, Not Commercial Use
Restriction Violation

 *Reo Props. Corp. v. Smith* 33

 Indexed Notice of Lis Pendens Effective if Original
is AWOL

 *Yeager v. Yeager* (13-86) 34

 Litigiousness

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Yeager v. Yeager (13–86)

34

- Classic example of litigiousness, since May 6, 2008:
- The parties “engaged in a course of incessant litigation”
- “which have thus far resulted in numerous court orders addressing various issues including interim distribution, appointment of a receiver, contempt, sanctions, equitable distribution” and;
- “no less than eleven appeals to this Court,…”
- “excluding the many petitions filed with this Court”

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Yeager v. Yeager (13–86)

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This litigation has been particularly rancorous—


Illustration: Plaintiff filed a petition for certiorari requesting the COA order the trial court to punish defendant’s counsel for “making threatening and derogatory comments regarding Petitioner and her counsel,” including comments that plaintiff’s counsel is...

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- *Yeager v. Yeager* (13–86) 34
- “responsible for the general public’s view of attorneys
- as ‘leg–chewing Sharks’ and
- ‘used–car salespersons.’”

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 *Yeager v. Yeager* (13–86) 34

 Since only two significant items of property were in dispute—the marital home... and a warehouse,

 “one may wonder why this case has been so protracted and contentious.

Finis

Thank You