



**North Carolina Case Law Update**  
September 14-16, 2017



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*Case Law Update*

**Case Developments, 2016/2017**



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**RECENT DEVELOPMENTS**

*Case Developments, 2016/2017*



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2016/2017 NC Case Law Update

North Carolina Supreme Court

- **Duke Energy Carolinas, LLC v. Gray** 6
  - 20-year Statute of Limitations for Easement Encroachment
  - N/A Covenant Violations
- **Quality Built Homes v. Town of Carthage** 8
  - No Municipal Impact fees under N.C.G.S. Section 160A-314
  - Language not ambiguous
  - No authorization as in Counties' enabling act



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2016/2017 NC Supreme Court Cases

- **In re Lucks** 9
  - RCP do not apply to N.C.G.S. Chapter 45 foreclosures
  - Res judicata and collateral estoppel doctrines N/A
- **United Community Bank (Ga.) v. Wolfe** 10
  - Owner's Testimony as to Value
  - Insufficient, standing alone, to avoid SJ
- **U.S. Bank v. Pinkney** 10
  - RCP Evidentiary Rules DO Apply to *Judicial* Foreclosure
  - More liberal than under N.C.G.S. Chapter 45



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NC Case Law Update

North Carolina Court of Appeals

- **Ocracomax, LLC v. Davis** 10
  - Limited Common Elements
  - SOL
  - Standing to Sue for Encroachment
- **Kimler v. The Crossings at Sugar Hill** 11
  - HOA Authority to Amend Declarations under the PCA
  - Not unlimited, but satisfied *Armstrong* test here
- **Dabbondanza v. Hansley** 14
  - Judgment Lien Priority, Nunc Pro Tunc Orders, Chain of Title



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NC COA Case Law Update

- ☞ **KB Aircraft Acquisition, LLC v. Berry** 15
  - ☞ Uniform Voidable Transactions Act - Statute of Repose
  - ☞ Date of transfer controls – not discovery
- ☞ **Tropic Leisure Corp. v. Hailey** 18
  - ☞ Full Faith and Credit;
  - ☞ Uniform Foreign Judgments Enforcement Act
- ☞ **Azige v Holy Trinity ...Church** 19
  - ☞ 1st Amendment - ecclesiastical matters
  - ☞ Subject matter jurisdiction
  - ☞ Church Law controls procedural issues

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NC COA Case Law Update

- ☞ **Sanchez v. Cobblestone HOA of Clayton, Inc.** 20
  - ☞ HOA Dues for amenities
  - ☞ Lot not Encumbered by declaration
  - ☞ Implied in fact contract; benefits; estoppel
  - ☞ Appealed - Consider *Tanglewood* (8/1-17) Roads
- ☞ **Emerald Portfolio v. OBX/Kinnakeet Assoc.** 21
  - ☞ Lost Note, Guaranty, Summary Judgment
  - ☞ Guaranty may be enforced even when note can't
- ☞ **Davis v. Davis** 22
  - ☞ COA Quashes Self-imposed Restraint on Alienation
  - ☞ Involved rental – may be applicable to HOA's
  - ☞ Contract issue contra *Wilner, v The Cedars of Chapel Hill, LLC*

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NC COA Case Law Update

- ☞ **Adelman v. Gantt** 23
  - ☞ Driveway Easement Implied by Prior Use
  - ☞ Strict Necessity not absolutely required
  - ☞ Is *convenience* now an element???
- ☞ **Banks v. Hunter** 27
  - ☞ Specific performance of mortgage transferring title
  - ☞ No subject matter jurisdiction
  - ☞ Clogging equity of redemption prohibited
- ☞ **RME Mgmt., v. Chapel H.O.M. Assocs.,** 27
  - ☞ Meaning of "When Due" for Property Taxes in Lease
  - ☞ 9/1... Early – Due - Not Late...
  - ☞ "nonsensical, hyper-technical construction"

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NC COA Case Law Update

- **S. Shores Realty Servs., Inc. v. Miller** **28**
  - Piercing Corporate Veil for LLC
  - Rare, fact driven case
- **Burns v. Kingdom Impact Global Ministries** **28**
  - Conveyance by Trustees of Unincorporated Religious Entity
  - Troubling opinion without cites
- **In re: Collins** **29**
  - Sufficient Proof for Ch. 45 Foreclosure
  - No allegations that any part of the affidavit false
  - Where affidavit is sufficient, burden shifts to offer evidence




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NC COA Case Law Update

- **Perry v. Bank of Am., N.A.** **29**
  - 12(b)(6) Motion Survival
  - Claim Under N.C. Gen. Stat. § 45-36.9 penalty statute
  - No evidence of notice or zero balance
- **Kelley v. Kelley** **29**
  - Separation Agreement and Modification
  - Must be Executed with 'Equal Dignity' or Void
  - Notarization required for both




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NC COA Case Law Update

- **Conleys Creek L.P. v. Smoky Mtn. C.C. POA** **30**
  - PCA SOL for Amendment Inapplicable to Merger
  - Not Condo if Common Elements Owned by POA
  - Failed Condo is property interest under PCA
  - Developer has no fiduciary duty to Power of Attorney
- **In re: Thompson** **30**
  - Latent DoT Description Error won't Defeat Conveyance
  - Wrong Section Number of Subdivision
  - "Doctrine of Surplusage"




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NC COA Case Law Update

***In re the Will of Allen*** 34

- ☞ Holographic Codicil to Typewritten Will Construed
- ☞ Court recognized Doctrine allowing
- ☞ Then strained construction to defeat testator's intent

***Kings Harbor HOA, Inc. v. Goldman*** 36

- ☞ No Ownership of Pier by Plat Water Access Easement
- ☞ Court's conclusion as to ownership – correct
- ☞ Court's conclusion as to property owners' right to use-???
- ☞ *Gaither v. Albemarle Hosp., Inc.*, (NC 1952)



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NC COA Case Law Update

***National Case of Interest*** 37

***Pullen v. Flowers, (Mo. App. S.D. 2016)***

- ☞ Action to set deed aside
- ☞ Complaint alleged:
  - ☞ Directors did not comply with sale Statutes
  - ☞ Improper disposal of corporate assets
- ☞ Appeals Ct rules Shareholders lack standing
- ☞ Held Shareholders limited to dissenter's rights



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Thank You



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