

“Caution: Wide Load” Might Not Mean Mobile Home

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To the delight of modular home manufacturers, real property litigators, and ne'er-do-well malcontents eager to thumb their noses at homeowner's associations and neighboring landowners, the North Carolina Court of Appeals has authored an opinion which purports to establish a more reasonable test for determining what is and what is not a mobile home or trailer (hereinafter used interchangeably). The new case is *Briggs, et al. v. Rankin*, No. A96-1443, (N.C. Ct. App. October 7, 1997) and because the test it articulates for identifying mobile homes must be administered on a case by case basis, the reader should anticipate increased litigation, confusion at the closing table and uneasiness among title insurers.

The Mobility Test

Prior to *Briggs*, the Court had promulgated a test for discerning what qualified as a mobile home for purposes of restrictive covenant interpretation, which test focused on the mobility of the structure being placed on the property. *Starr v. Thompson*, 96 N.C. App. 369, 385 S.E.2d 535 (1989); *Angel v. Truitt*, 108 N.C. App. 679, 424 S.E.2d 660 (1993); and *Young v. Lomax*, 122 N.C. App. 385, 470 S.E.2d 80 (1996). *Briggs*, on the other hand, establishes that "it is important to look at *all* the characteristics of the finished structure, in addition to the chosen method of delivery." *Briggs*, slip op. at page 5 (emphasis added).

The need to unequivocally determine what structures are "mobile" homes has become increasingly more important as today's property owners reside in subdivisions where every detail from the color of refuse receptacles to the height and composition of fences is governed by restrictive covenants. Most of these covenants prohibit the placement of mobile homes or trailers on subdivision lots. Unfortunately, the covenants usually fail to define the terms "mobile home" or "trailer." Lot owners are often unsure as to what type of structure they can place on their property; the neighbors, on the other hand, have a surprisingly clear picture as to what they consider undesirable.

The issue with mobile homes has also become more pronounced with the increase in popularity of the modular home, a structure which is manufactured off-site, delivered to the lot in components, and assembled upon arrival. Before the modular home became popular, the fact that restrictive covenants did not specifically define "mobile home" was not problematic. There wasn't much question when a double-wide rolled into Mansion Acres. Now, however, modular homes are manufactured with the same materials as site-built homes, in a variety of designs and sizes. In fact, the "offending" structure in the *Briggs* case comprised over 2,000 square feet of living area. In other words, this was no "trailer." And that is the argument which won the day for the property owner. They shifted the Court's attention away from how the structure arrived at the lot, the very factor which had pre-occupied the same court in the *Starr* line of cases.

In *Starr*, the offending structure was "made up of two sections about 8 feet wide and 40 feet long" and could not be distinguished from "double-wide mobile home sections that are to be seen daily on the lots of mobile home dealers and **rolling down the highways of the State.**" *Starr*, 96 N.C. App. at 371 (emphasis added). Upon delivery to the lot, the structure's axles, wheels and tongue were removed, the two sections were connected and placed on footings. The applicable restrictive covenants simply stated, "[n]o trailers or mobile homes shall be allowed on the property." *Id.* Of course, the defendants claimed that their structure was a "modular" home. The Court was summarily unimpressed with their argument that the structure complied with the North Carolina Uniform Residential Building Code and was not considered a mobile home by the local zoning authority. The Court also rejected the defendant's argument that the structure could no longer be deemed to be a mobile home since the axles, wheels and tongue were removed after it was placed on the lot. See also *City of Asheboro v. Auman*, 26 N.C. App. 87, 214 S.E.2d 621 (1975). Modular homes had not yet advanced to their current level of design, and the Court concluded that if it looks like a duck, and especially if it *moves* like a duck, it must be a duck.

The distinction between mobile homes and modular homes was further explored by the Court in a case which emphasizes the importance of defining terms when drafting restrictive covenants. In *Forest Oaks Homeowners Assn. v. Isenhour*, 102 N.C. App. 322, 401 S.E.2d 860 (1991), the Court determined that the offending structure was a modular home and not a mobile home in violation of applicable restrictive covenants. The structure was very similar to the one in *Starr* in that "(1) it was brought onto the property in two sections, both on their own wheels and axles; (2) that each section was built in a factory on permanent metal frameworks; [and] (3) that upon delivery, the sections were joined and placed over poured concrete footings without a foundation." *Isenhour*, 102 N.C. App. at 323. The important factor in *Isenhour*, however, is that the covenants expressly permitted "modular or component homes" erected on a permanent foundation. Since the covenants did not specifically define the terms "mobile home" nor "modular home," the Court relied heavily on the fact that the offending structure had "been given the status of 'modular home' as defined by the North Carolina Uniform Residential Building Code." *Id.*

The Court, which had basically ignored the building code in *Starr*, considered the building code's definition of "modular home" to be dispositive where the applicable covenants specifically allowed modular homes, but did not clearly define the same. In earlier cases, the Court had not been required "to differentiate between [mobile homes and modular homes] and could easily interpret the intent of the restrictions to prohibit any structures of the type complained of." *Isenhour*, 102 N.C. App. at 324. Where the covenants allowed modular homes, the Court was willing to look beyond the method of transporting the structure to the lot.

The case of *Angel v. Truitt*, 108 N.C. App. 579, 424 S.E.2d 660 (1993), involved covenants which provided that "no mobile home shall be allowed on the property" but which failed to address modular homes or further define "mobile home." As a result, the Court returns its focus to the mobility of the structure and places an interesting amount of emphasis on the American Heritage Dictionary as authority for what constitutes a mobile

home. While the Court relied on the North Carolina Uniform Residential Building Code in *Isenhour*, the Court reverts to its earlier position stated in the *Starr* case. "The fact that the structure may have been constructed...in compliance with provisions enacted under the State Building Code is not relevant." *Angel*, 108 N. C. App. at 682-683.

In *Angel*, the Court is greatly persuaded by the fact that the offending structure was "not designed for transport. The modules [were] not constructed with a permanent chassis nor [did] they have the same capacity to travel on the public roads on their own attached wheels as do mobile homes." *Angel*, 108 N.C. App. at 683. The Court noted that, although the structure had a "permanent steel flooring system...designed to...provide longitudinal support for transport over the public highways," the structure could not be attached **directly** to axles and had to be lifted by crane onto a dolly for transport. *Id.*, at 680.

The Court reaffirms this mobility test in *Young v. Lomax*, 122 N.C. App. 385, 470 S.E.2d 80 (1996), the only difference being the outcome of the case. In *Young*, the offending structure was made up of two components, each with its own permanent steel chassis consisting of I-beams and four axles with two wheels per axle. As a result, the structure was deemed to be violative of the covenants prohibiting mobile homes. The **potential** for mobility as opposed to **actual** mobility remained a critical concern as the Court noted, "rendering a structure immobile after it has been installed does not change the fact that the structure is still a mobile home." *Young*, 122 N.C. App. at 388.

Beyond Mobility

Although not popular with modular home manufacturers, the Court's interpretation of restrictive covenants which prohibit mobile homes and the types of structures which constitute a mobile home was a relatively simple one. If the structure had the ability to travel on its own chassis without being lifted by a crane onto a dolly, it was a mobile home in violation of restrictive covenants prohibiting same. For better or for worse, the *Briggs* case changes all of that.

The restrictive covenants in *Briggs* provide, *inter alia*, that, "no structure of a temporary character, **trailer**...or any other outbuilding shall be inhabited, located or used upon any building unit or lot at any time as a residence, either temporarily or permanently." *Briggs*, slip op. at page 3. The covenants do not define modular homes or otherwise allow them to be placed on lots in the subdivision. The offending structure in *Briggs* had a steel framing system which allowed it to be transported by attaching a tongue and wheels to the home. Thus, under the *Angel* and *Young* reasoning, the structure should have been deemed to be a mobile home because wheels could be attached to the steel framing system and the unit could roll down the road.

The Court in *Briggs*, instead, considered other factors, specifically:

"(1) whether the structure must comply with the N.C. Regulations for Manufactured/Mobile Homes, which are consistent with Housing and Urban Development (HUD) national regulations, or with the Building Code; (2) whether the structure is attached to a permanent foundation; (3) whether, after constructed, the

structure can be easily moved or had to be moved like a site-built home; (4) whether title to the home is registered with the N.C. Department of Motor Vehicles or title must be conveyed by a real property deed; and (5) how the structure is delivered to the homesite." *Briggs*, slip op. at page 6.

Interestingly enough, the Court assigns significant weight to the fact that the defendants applied for and received a building permit from the County for the "construction" of the "modular" home. The Court even quotes from Volume VIII of the North Carolina Uniform Residential Building Code, noting that "modern construction techniques are daily changing what and how America builds." *Id.* at page 4. Acknowledging its former position in *Starr* with regards to the building code, the Court nonetheless recites the Code's definition of modular homes, even though the applicable covenants did not define modular homes nor was there a provision allowing them. The Court also considered the fact that another owner in the subdivision had been allowed to "install" a modular home on his lot, and that after the first two sections of the structure were delivered, they were attached to a permanent foundation of poured concrete. Thus, moving the structure would have required that it be treated like a site-built home.

The holding of the *Briggs* case appears to be more fair and even-handed than that of *Angel* and *Young* in that all characteristics of a finished structure are considered, in addition to the ability to transport the structure. The list of factors considered in *Briggs* is not exhaustive, however; in fact, the Court acknowledges that the opinion lists only "some" of the factors to be considered. *Briggs* slip op. at page 5. Does square footage have anything to do with determining whether a structure is a mobile home? Do the number of components of the structure come into play? *Briggs* clearly establishes that the ability of the structure to travel on its own chassis is only one characteristic of "all" the characteristics to be considered.

Conclusion

When the closing attorney encounters manufactured housing, he must engage in a good deal of fact finding. At a minimum, the attorney must review applicable restrictive covenants for provisions which permit or prohibit mobile homes, trailers or modular homes, and then determine the type of manufactured housing his client has purchased. If his client intends to place a modular home on a lot burdened by covenants prohibiting but not adequately defining mobile homes, then the fact finding must include some or all of the factors enumerated in *Briggs*. Title insurance companies will struggle, as well, with the fact-intensive test articulated in *Briggs*, a test which makes underwriting more difficult because reasonable men may differ on the facts. Marketability remains a concern, and depending on how the anticipated increased litigation and marketability claims go, title companies may become increasingly reluctant to insure manufactured housing in the face of adverse covenants. The residential real property lawyer is well advised to begin his inquiry into the facts, as well as his dialogue with the title company, as early as possible in the modular home transaction.