Mobile Myths and Misconceptions

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No, there is not a Santa Claus. Nor is there an Easter Bunny. No, there are no alien autopsies being performed in the American southwest. No, there is no such thing as a "quick title question." And, no, it doesn't really matter if you call a "double-wide" a "modular home." Please excuse the cynicism, but the Title Industry has taken it on the chin recently with respect to claims involving manufactured housing. In light of that fact, the purpose of this article is to disabuse readers of two widely held, "mobile misconceptions": 1) Permanently annexing the manufactured unit to real property obviates the need to search records at the Department of Motor Vehicles, and 2) Calling a two-piece manufactured unit with a flat roof a "modular home" placates the neighbors in a subdivision where the restrictive covenants prohibit mobile homes, trailers, and so forth.

Quest for the MVT

For those familiar with *Monty Python's Holy Grail*, contacting the Department of Motor Vehicles for purposes of locating a Motor Vehicle Title (hereinafter referred to as "MVT") may seem as daunting as facing the inquisitive old man who guards the bridge to Avalon. For those unfamiliar with this off-beat Arthurian flick, imagine being cast into a bottomless pit of despair as punishment for failing to have the answers to seemingly irrelevant questions. Contacting DMV can be just as unnerving. However, you may just want to leap voluntarily into that pit of despair if you are ever faced with the facts of People's Savings and Loan Association v. Citicorp Acceptance Corporation, 407 S.E.2d 251, 103 N.C.App. 762, (1991) and fail to make a call to your local DMV representative. The facts of this case are so common it could walk into your office at most anytime. *En garde!*

In *People's*, a little old lady (let's call her Guinevere) purchased a manufactured home and financed the deal with Defendant. Guinevere successfully applied for an MVT (see N.C.G.S. 20-50 and 20-52). Defendant simultaneously placed a notation of lien on the face of that MVT in accordance with N.C.G.S. 20-58. Guinevere transports her new home to Johnston County and permanently affixed the unit to a brick foundation. She also attached a deck, a carport and a septic system. Five years later, Guinevere refinances her Johnston County property (this is when she walks into your office near the precipice of the pit of despair). The refinancing lender includes the manufactured unit in its valuation of the collateral for the loan. The refinancing lender secures the loan with a recorded deed of trust. Plaintiff purchases the underlying Note and, of course, Guinevere defaults. Guinevere also defaults on Defendant's loan and Defendant repossesses the manufactured unit. Plaintiff recovers only 1/3 of the debt at the foreclosure of the now unimproved property and sues Defendant for conversion.

Plaintiff unsucessfully argued that Defendant's "security interest lost its priority" due to Guinevere's annexation of the manufactured unit to the real property. Instead, the Court

of Appeals favored the Defendant's argument that no fixture filing nor recorded deed of trust was required since N.C.G.S. 20-58 *et seq.* "provides the exclusive method for a first mortgagee . . . to perfect a security interest in a mobile home." *People's* at 253, 766. Note that the court asserts:

"we find unconvincing the argument . . . that subsequent parties with an interest in the real estate are often unable to ascertain whether the structure on the property is a mobile home. While it may not be readily apparent . . .these parties can protect their interests by more careful inspection, by questioning the homeowner, or by checking for a certificate of title." *People's* at 254, 767.

For those who need more convincing, see Hughes v. Young, 444 S.E.2d 248, 115 N.C.App. 325 (1994) wherein the same court similarly noted "the prudent purchaser will examine both the real property records in the county where the land is located **and** (emphasis added) the records of the Department of Motor Vehicles."

Of course, the lenders and buyers aren't generally passing on the title for these transactions. Closing attorneys are called upon to do this. It is disconcerting how many closing attorneys continue to labor under the misconception that once the unit is permanently affixed to the property in question, no search of DMV records need be done. The court rightly noted that it is often difficult to know if the improvement situate on the property is or was ever a mobile home. Thus, it is highly advisable to ascertain that fact early on by having the seller/borrower execute an affidavit with regards to this matter. Such an affidavit could also prove useful in determining a number of other important matters such as marital status, existence of city water and sewer facilities, desire to close by mail or via power of attorney and so forth. If the property owner gives any indication that the improvement is or ever was a mobile home, it is imperative that DMV be contacted. As Guinevere's case reflects, this is true no matter how long ago the unit was permanently affixed to the property.

What's in a name?

In 1200 B.C., those crafty Greeks constructed what was probably the world's first mobile, manufactured nightmare complete with a tongue, axles, and wheels. They called it a gift. The Trojans called it the end of a nine year war. Instead of coining the phrase "beware of Greeks bearing gifts," the Trojans should have come up with "if it comes in on wheels, look out!" Such a phrase could have saved us all a lot of trouble.

Many optimists (possibly of Trojan descent) welcomed the Court of Appeals' opinion in Briggs, et al. v. Rankin, 491 S.E.2d 234, 127 N.C.App. 477 (1997) *aff'd*, 500 S.E.2d 663, 348 N.C. 686 (1998), as the case which finally answered the question of "what is a mobile home?" Why is this noteworthy? The need to unequivocally determine which structures are "mobile homes" has become increasingly more important as more and more of today's property owners reside in subdivisions where every detail from the color of refuse receptacles to the height and composition of privacy fences is governed by restrictive covenants. Unfortunately, these 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 of what they deem undesirable. This issue has also become more pronounced with the increase in popularity of the "modular home." These structures are typically manufactured off-site, delivered in components, and assembled upon arrival. More importantly, the savvy manufacturers have discovered that most of the problematic restrictive covenants fail to mention "modular homes" and fail to define "mobile home." Undoubtedly, unscrupulous double-wide salesmen are out there selling "modular homes" to the unsuspecting Trojans in the populace. For those of us in the know, remember Troy. "If it comes in on wheels, look out!"

Prior to *Briggs*, the Court of Appeals promulgated a line of cases dealing with this issue which focused on how the offending structure was delivered to the property. *See* Starr v. Thompson, 385 S.E.2d 535, 96 N.C.App. 369 (1989), Forest Oaks Homeowner's Association v. Isenhour, 401 S.E.2d 860, 102 N.C.App. 322 (1991), Angel v. Truitt, 424 S.E.2d 660, 108 N.C.App. 579 (1993), and Young v. Lomax, 470 S.E.2d 80, 122 N.C.App. 385 (1996). Although not popular with modular home manufacturers, the Court's reasoning was fairly simple: if a 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. The Court in *Briggs* changed all of that by holding that mobility was just one of five factors to be considered. Specifically the Court listed the following factors:

1) whether the structure must comply with the North Carolina 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 has to be moved like a site-built home; 4) whether title to the home is registered with the North Carolina Department of Motor Vehicles or title must be conveyed by a real property deed; and 5) how the structure is delivered to the home site." *Briggs* at 238, 481.

Though more even-handed and ostensibly fairer than the holdings in the *Starr* line of cases, *Briggs* swings wide the gates of Troy for would-be Greeks bearing gifts. In fact, the Court of Appeals' unpublished opinion of Wilson et al. v. Abbot, COA 98-1048 reflects just how much trouble is still out there for the unwary. For those who thought *Briggs* was a cure-all, please read this unpublished opinion. The facts in this case are similar. However, this case involving a structure, which under the *Briggs* test should have been deemed non-violative, is sent back to the trial court on a denied motion for summary judgment because "genuine issues of material fact" remain. That, in a nutshell, is the limitation of *Briggs*. The new 5-part test is so fact specific, cases will rarely be decided on issues of law. The fact finder will be instrumental and slam dunk motions for summary judgment will rarely be granted. That's right. These cases will only be resolved by litigation. This puts the neighbors back in the driver's seat. And that is troubling to the Title Industry.

At this point, *Briggs* is still good law. *Wilson* simply establishes that expensive, time-consuming litigation will result when the neighbors don't like what rolls into their neighborhood. In light of these developments, the Title Industry is in the unenviable position of trying to read tea leaves to see how a jury might come down on a particular

structure (by the way, the prophet Calchus advised the Trojans to bring the horse into the gates of the city). Of course, the title company can only engage in such a practice if it is informed of the issue in the first place. Please review all covenants carefully and report any and all situations involving structures which may not have been built on-site. It is always helpful to have copies of the specifications for these structures as well as a map of the surrounding properties together with a list of what kind of structure is situate on those properties. Simply put, if this is the first "modular" going in on a cul-de-sac with 10 pre-existing site-built homes, affirmative coverage is unlikely. Similarly, if the slope of the roof on the subject structure fails to turn water or presents little or no obstacle for Santa and his entourage, waivers from the adjoining owners may be in your future.

Okay, so maybe we believe in Santa after all.