IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-1213

Filed: 3 July 2018

Transylvania County, No. 14 CVS 216

ROBERT JOSEPH STEWART, CHRISTINE SYLVIA STEWART, LEWIS S. SAYRE, MARCIA D. SAYRE, JOSEPH BYINGTON, W.E. WEST, ELIZABETH S. WEST, THEODORE ROOSEVELT FLAGG, JR., SUPORN FLAGG, JOHN MARK DEAN, RUTH ANN DEAN AND PHILIP SCOTT DEAN, Plaintiffs,

v.

STEEL CREEK PROPERTY OWNERS ASSOCIATION, Defendant.

Appeal by Plaintiffs from order entered 29 December 2016 by Judge Mark E. Powell and judgment entered 7 June 2017 by Judge Alan Z. Thornburg in Transylvania County Superior Court. Heard in the Court of Appeals 3 April 2018.

Conrad & Scherer, LLP, by Candace A. Mance, for plaintiff-appellants.

Bolster, Rogers & McKeown, LLP, by Jeffrey S. Bolster and J. Wriley McKeown, for defendant-appellee.

HUNTER, JR., Robert N., Judge.

Several residents of the Springbrook subdivision ("Plaintiffs") appeal from the trial court's order granting summary judgment in favor of Steel Creek Property Owners Association ("Defendant" or "POA") and the trial court's grant of Defendant's

motion *in limine*. On appeal, Plaintiffs argue the trial court committed the following errors: (1) granting Defendant's motion for summary judgment and concluding the Road Maintenance Agreement ("RMA") did not bind Defendant as a real covenant running with the land; (2) granting Defendant's motion *in limine* to exclude Plaintiffs' road maintenance expert from testifying; and (3) granting Defendant's motion for summary judgment and concluding Defendant did not violate the North Carolina Debt Collection Act ("NCDCA"). After review, we reverse and remand in part, and affirm in part.

I. Factual and Procedural Background

This case arises from a dispute between homeowners in neighboring subdivisions. The question is: "What, if any, payment is due from Plaintiffs to Defendant for maintenance of a mutually shared road?"

Springbrook and Steel Creek subdivisions are both located on Rich Mountain, in Dunns Rock Township, North Carolina. Line Runner Ridge Associates ("Line Runner I") developed Springbrook in 1984. Springbrook Lane starts at the public highway and runs north through Springbrook Subdivision to its end and to the beginning of the Steel Creek Subdivision. It is the sole route of ingress and egress to the public road for both Springbrook and Steel Creek residents. Line Runner ("Line Runner II"), a North Carolina general partnership, developed Steel Creek Subdivision in 1999.

On 1 January 1999, six property owners from Springbrook (a majority of the property owners at that time) and Line Runner II, the developer of Steel Creek, entered into a RMA.[1] This agreement provided, in pertinent part:

> A. Line Runner was the owner and developer of the 55.23 acre parcel which has been developed and sold as the Springbrook Subdivision.
>
> B. The Residential Area Covenants for Springbrook as recorded . . . require annual road maintenance assessments of at least $120 per year.
>
> C. Line Runner has acquired and is developing a parcel north of Springbrook, known as the Steel Creek Development.
>
> D. The road through Springbrook also serves Steel Creek, and Line Runner has made substantial improvements to the road.
>
> E. The parties wish to provide for the continued maintenance of the road, with the costs shared in an equitable manner by the property owners in both Developments.
>
> …
>
> 1. The annual road assessments for the Springbrook Subdivision shall be reduced to $100 per year for those property owners who sign this Agreement on or before July 1, 1999.
>
> 2. Payment of future road assessments by Springbrook property owners shall continue to be made to Line Runner until a property owners association is formed for Steel

[1] The record is silent as to the title history of the Steel Creek property. The complaint's allegations state Line Runner II obtained 500 acres from a private party; however, the prior title history of the property is unclear.

> Creek. Thereafter, payments shall be made to the Steel Creek Property Owners Association.
>
> 3. The annual amount of the assessment may be adjusted to reflect the costs of maintaining the road, but the amount payable by Springbrook property owners shall not exceed one-third of the amount assessed for vacant lots in Steel Creek without the written consent of a majority of Springbrook property owners. The Springbrook assessments shall be the same for vacant and improved lots.
>
> 4. This Agreement shall be considered an amendment of the Covenants for Springbrook if signed by owners representing a majority of the Lots in Springbrook.

Springbrook lot owners who signed the RMA before 1 July 1999 paid a discounted fee rate of $100. The residents who did not sign the agreement before this date paid the full rate of $120, as provided in the original covenants. The RMA contained a price adjustment clause, authorizing the property owners association to adjust Plaintiffs' fee rates to reflect increases in maintenance costs. The fee increase could not exceed "one-third of the amount assessed for vacant lots" without written, majority consent of Springbrook property owners. Although the RMA was signed on 1 January 1999, the instrument was not filed in the Transylvania Register of Deeds's Office in Book 455, Page 446 until 11 October 1999, almost eleven months after it was executed.

The RMA amended the original Springbrook road maintenance covenants, found in the general Springbrook restrictive covenants, and bound Springbrook

residents to pay maintenance fees for Springbrook Lane. Springbrook residents would pay those fees to Line Runner II until Line Runner II developed Steel Creek. At which time, Springbrook residents would pay the fees to the Steel Creek POA.

On 7 January 1999, Line Runner II signed and recorded in the Transylvania Register of Deeds's Office in Book 442, Page 513 a "Declaration of Protective Covenants" for Steel Creek. (All capitalized in original). The declaration contained a road maintenance fees clause, which provided during any period which Steel Creek assumed responsibility for maintaining Springbrook Lane, Defendant shall collect an "equitable" share of maintenance costs from Springbrook residents. This equitable share would be calculated "at least one[-]third" of the then prevailing per lot assessment in Steel Creek. Improved lots are assessed at a higher rate than vacant lots. The amount due from Springbrook residents under the RMA are calculated differently under the Steel Creek covenants. The road maintenance covenant fixed the pro-rata share of a vacant lot at one-half the contribution rate of an improved lot. The Steel Creek Protective Covenants did not explicitly reference the existence of the RMA between the six Springbrook residents and Line Runner I.

For six years, from 1999 through 2005, Springbrook property owners paid annual maintenance fees to the Steel Creek POA in accordance with the amounts set forth in the RMA. Residents who signed early paid $100; later signers paid $120.

Starting in either in 2006 or 2007, and continuing to the date of the complaint, Steel Creek POA charged each Plaintiff approximately $233.33 annually for road maintenance fees. This figure represented a one-third assessment of the improved lots in Steel Creek This higher amount was calculated as provided by the Steel Creek covenants. The Steel Creek POA admits it did not obtain written consent of the majority of Springbrook owners prior to increasing the assessment, in violation of Plaintiffs' RMA.

On 24 June 2013, Plaintiff Robert Stewart, a Springbrook property owner, received a letter from John Bruce, President of the Steel Creek POA, demanding Stewart pay the annual fee, in the amount of $233.33. The letter stated the $233.33 figure was calculated as one-third of the Steel Creek rate of $700 for an improved lot, as provided in the Steel Creek covenants.

Plaintiffs filed a complaint on 15 May 2014, seeking declaratory relief and monetary damages for the following claims for relief:[2] (1) breach of the terms of the RMA by charging the Springbrook residents the amounts calculated under Steel Creek covenants and not the RMA; (2) failing to maintain Springbrook Lane according to the terms of the RMA; (3) violation of the NCDCA; and (4) unjust enrichment for receiving funds to improve Springbrook Lane and not maintaining it or, in the alternative, charging and receiving funds which were not contractually due.

[2] Counts six and seven of Plaintiffs' complaint are directed towards two separate defendants not parties to this appeal. Plaintiffs voluntarily dismissed their claims against these defendants.

On 11 August 2014, Defendant answered the complaint, admitting to charging one-third the rate of improved lots as a base price fixture, in contradiction of RMA's provision for one-third the rate of vacant lots. Subsequently, the parties filed cross motions for summary judgment, together with road maintenance agreements, subdivision covenants, and other supporting documents.

Being questions of law involving contractual obligations, the matters were capable of judicial decision, and the cross motions for summary judgment came on for hearing on 28 November 2016. The trial court ruled for Plaintiffs and against Defendant on Defendant's request for summary judgment on the claim for unjust enrichment, allowing that claim to proceed. The trial court ruled for Defendant on all other claims.

The trial court held another hearing on 6 February 2017. The trial court granted Defendant's motion *in limine* to exclude the road maintenance report and any relating testimony. The matter then proceeded to a bench trial on the sole issue of damages or what amount, if any, Plaintiffs were entitled to. At trial, both Plaintiffs and Defendant presented evidence concerning the amount due as restitution damages.

On 7 June 2017, the trial court entered a judgment in Plaintiffs' favor on the sole count of unjust enrichment.[3] Plaintiffs timely filed notice of appeal on 3 July 2017.

II. Jurisdiction

Plaintiffs appeal the order of a superior court in a civil action disposing of all the issues as to all parties. Thus, we have jurisdiction under N.C. Gen. Stat. §§ 1-277(a) and 7A-27(b)(1) (2017).

III. Standard of Review

We review whether the trial court erred in granting Defendant's motion for partial summary judgment for the RMA and NCDCA claims *de novo*. "Our standard of review of an appeal from summary judgment is de novo; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*,

[3] The trial court exercised its equitable powers in determining the amount and distribution of these refunds. After considering the prior refund amounts offered by Defendant, the trial court ordered a total refund award of $6,033.15. This refund pertained to overcharged fees from 2009 through 2015. The total amount of the refund was distributed equitably amongst the following Plaintiffs:

Joseph Byington	$816.69
Lewis Sayre/Marcia Sayre	$683.21
Bob Stewart/Christine Stewart	$1,399.98
Theodore Flagg/Suporn Flagg	$683.28
W.E. West/Elizabeth West	$1,633.31
John Dean/Ruth Dean/Phillip Dean	$816.68

361 N.C. 519, 523-24, 649 S.E.2d 382, 385 (2007)). "If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific facts which establish the presence of a genuine factual dispute for trial." *Id.* at 573, 669 S.E.2d at 576 (citation omitted). "If the moving party fails to meet his burden, summary judgment is improper regardless of whether the opponent responds." *Lowe v. Bradford*, 305 N.C. 366, 369, 289 S.E.2d 363, 366 (1982) (citations omitted).

"A motion *in limine* seeks pretrial determination of the admissibility of evidence proposed to be introduced at trial; its determination will not be reversed absent a showing of an abuse of the trial court's discretion." *Warren v. Gen. Motors Corp.*, 142 N.C. App. 316, 319, 542 S.E.2d 317, 319 (2001) (citing *Nunnery v. Baucom*, 135 N.C. App. 556, 566, 521 S.E.2d 479, 486 (1999)). "An abuse of discretion exists when the record shows that the trial court's ruling was so arbitrary that it 'could not have been a result of competent inquiry.' " *Schmidt v. Petty*, 231 N.C. App. 406, 410, 752 S.E.2d 690, 692 (2013) (quoting *Morris v. Gray*, 181 N.C. App. 552, 556, 640 S.E.2d 737, 740 (2007)) (some internal quotation marks omitted).

IV. Analysis

Plaintiffs assign error to three questions, which they characterize as follows: (1) Did the trial court err when it held the RMA is non-binding on Defendant and granted summary judgment in favor of Defendant?; (2) Did the trial court err when

it granted Defendant's motion *in limine* excluding Plaintiffs' road maintenance expert from testifying at trial?; and (3) Did the trial court err when it granted summary judgment in favor of Defendant on the NCDCA claim? We consider each of these in turn.

A. Did the trial court err when it held the RMA is non-binding on Defendant and granted summary judgment in favor of Defendant?

"A covenant is either real or personal. Covenants that run with the land are real as distinguished from personal covenants that do not run with the land." *Raintree Corp. v. Rowe*, 38 N.C. App. 664, 669, 248 S.E.2d 904, 907 (1978) (citation omitted). Creation of a real covenant requires three elements: "(1) the intent of the parties as can be determined from the instruments of record; (2) the covenant must be so closely connected with the real property that it touches and concerns the land; and, (3) there must be privity of estate between the parties to the covenant." *Midsouth Golf, LLC v. Fairfield Harbourside Condo. Ass'n, Inc.*, 187 N.C. App. 22, 30-31, 652 S.E.2d 378, 384 (2007) (quotation marks and citation omitted).

In addition, for a covenant to run with the land, a fourth element applies. "It is well settled in our state that a restrictive covenant is not enforceable, either at law or in equity, against a subsequent purchaser of property burdened by the covenant unless notice of the covenant is contained in an instrument in his chain of title." *Runyon v. Paley*, 331 N.C. 293, 313, 416 S.E.2d 177, 191 (1992).

Mere recordation of a public document does not provide adequate notice to a subsequent purchaser, unless it is in the subsequent purchaser's chain of title.

> A purchaser is chargeable with notice of the existence of the restriction only if a proper search of the public records would have revealed it and it is conclusively presumed that he examined each recorded deed or instrument in *his line of title* and to know its contents. If the restrictive covenant is contained in a separate instrument . . . and not in a deed in the chain of title and is not referred to in such deed a purchaser, under our registration law, has no constructive notice of it.

Turner v. Glenn, 220 N.C. 620, 625, 18 S.E.2d 197, 201 (1942) (internal citations omitted) (emphasis added).

Plaintiffs specifically challenge the notice element and levy two arguments. First, notice is not required because the RMA is not a restrictive covenant. Second, there was adequate notice because the RMA was a publicly recorded document.

In regard to the contention the RMA is not a restrictive covenant, the language in the RMA dispels this argument. The first paragraph of the original Springbrook covenants labels the promises therein as "Restrictive Covenants." The RMA, by its terms, serves as "an amendment of the Covenants for Springbrook if signed by owners representing a majority of the Lots in Springbrook." In their verified complaint, Plaintiffs acknowledge Line Runner II "entered into the Road Maintenance Agreement with the *majority* of the property owners of Springbrook at a reduced rate in perpetuity relative to the Steel Creek annual assessments." (Emphasis added).

The RMA, when signed by the majority of lot owners in Springbrook, was a valid amendment to the original Springbrook covenants labeled as restrictive in the recorded document. Though the RMA imposes an affirmative obligation, it remains an amendment to an agreement that is unambiguously labeled as a restrictive covenant. *See generally Four Seasons Homeowners Ass'n v. Sellers*, 62 N.C. App. 205, 209-11, 302 S.E.2d 848, 851-53 (1983). Because the parties to the agreement considered the agreement restrictive in nature by the bargain, we hold prior record notice in the owners' chains of title is an essential element of this claim.

In regard to their second argument, there remains a genuine issue of material fact as to whether the RMA is in Steel Creek property owners' chains of title. Plaintiffs' assertion the RMA is a publicly recorded document, without more, is not sufficient to prove the RMA appears in the Steel Creek property owners' chains of title.

The requisite standard for record notice is a question dispositive of this issue. As to this factual question, neither the record nor the parties' support for their arguments is enlightening. At the hearing, Defendant claimed the RMA would not have appeared in a title search of Steel Creek property. Yet, Defendant offered no affidavit to support this assertion, or any other land record evidence which a title search would have revealed. As the moving party, to prevail in summary judgment, Defendant must have shown there was no genuine issue of material fact. *Lowe*, 305

N.C. at 369, 289 S.E.2d at 366 (citations omitted). Because Defendant failed to satisfy this burden, a genuine issue of material fact remains as to whether a title search of land within Steel Creek should have revealed the RMA to a purchaser.[4]

Without such proof, there remains an open question: does the RMA run with the land? If, upon remand, the fact-finder determines there is record notice in Steel Creek property owners' chains of title to conclude the RMA is a real covenant running with the land, the RMA governs the duties owed between Plaintiffs and Defendant. "A court will generally enforce . . . covenants to the same extent that it would lend judicial sanction to any other valid contractual relationship." *Wise v. Harrington Grove Cmty. Ass'n, Inc.*, 357 N.C. 396, 401, 584 S.E.2d 731, 736 (2003) (quotation marks and citation omitted), *superseded by statute on other grounds as stated in Happ v. Creek Pointe Homeowner's Ass'n*, 215 N.C. App. 96, 102, 717 S.E.2d 401, 405 (2011). Moreover, "[i]f there is a contract between the parties the contract governs the claim and the law will not imply a contract." *Booe v. Shadrick*, 322 N.C. 567, 570, 369 S.E.2d 554, 556 (1988) (citation omitted). Therefore, if the RMA is a binding real covenant between the parties, the question is contractual, and not in *quantum meruit*.

[4] Because Defendant, as the moving party, has failed to meets its burden by showing no genuine issue of material fact exists, the burden does not shift to Plaintiffs as the nonmovant. *Lowe*, 305 N.C. at 369-70, 289 S.E.2d at 366 (citations omitted). Thus, we need not determine whether Plaintiffs met their burden of showing a genuine issue of material fact does exist or an excuse for not doing so. *Id.* at 369-70, 289 S.E.2d at 366 (citation omitted).

As the question of governing documents is unanswered, so, too, is the question of duties required by purchasers of land or examiners of title.

> [I]t is the duty of a purchaser of land to examine every recorded deed or instrument in his line of title and he is conclusively presumed to know the contents of such instruments and is put on notice of any fact . . . effecting his title which either of such instruments reasonably discloses.

Turner, 220 N.C. at 626-27, 18 S.E.2d at 202.

Thus, if the RMA appears in the chains of title or the chains contain an instrument which would place a title searcher on notice of an encumbrance, it is presumed examiners of titles to land in Steel Creek are on notice of it and the contents of agreements contained therein. If, however, the RMA does not appear in the chains of title or is not referenced therein, a title examiner of land in Steel Creek is under no duty to search immaterial recorded documents.

We reverse the trial court's order granting summary judgment on this issue and remand for further proceedings to answer this factual question.

B. Did the trial court property grant Defendant's motion *in limine*?

"It is the trial court's responsibility to determine 'whether the expert is proposing to testify to (1) scientific knowledge' and whether that knowledge '(2) will assist the trier of fact to understand or determine a fact in issue.' " *State v. McGrady*, 232 N.C. App. 95, 102, 753 S.E.2d 361, 368 (2014) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 592, 125 L. Ed. 2d 469, 482 (1993)). An expert witness

may not be permitted to testify when the trial court finds their knowledge will not assist the trier of fact. *Id.* at 102, 753 S.E.2d at 368 (citing *Daubert*, 509 U.S. at 591, 595, 125 L. Ed. 2d at 481, 483-84).

As this case was a bench trial, the trial court acted as the trier of fact. Accordingly, the trial court's decision to exclude evidence it feels is not helpful will not be overturned absent Plaintiffs showing an abuse of discretion.

At trial, Plaintiffs asserted their "[road maintenance] expert is going [to] testify . . . about common or what are considered good road maintenance practices."[5] Both parties stipulated the expert was sufficiently qualified. Plaintiffs proposed to offer this expert testimony in support of one of their two theories of recovery under the doctrine of unjust enrichment.

First, Plaintiffs contended Defendant had been unjustly enriched by charging Plaintiffs for maintenance of Springbrook Lane and subsequently failing to maintain it. Under this theory, Plaintiffs sought restitution for the amount of road maintenance fees paid by Plaintiffs to Defendant. Second, Plaintiffs sought a refund of the road maintenance assessments they paid to Defendant in light of the summary

[5] Plaintiffs failed to make a formal offer of proof as to what the expert would have testified about subsequent to the motion *in limine* being granted. In determining whether the trial court erred in denying admission of expert witness testimony, our Court is greatly assisted by a formal offer of proof. While not as enlightening as a formal offer of proof, Plaintiffs informal offer of proof at trial was effective preservation of the issue for appeal. *See State v. Martin*, 241 N.C. App. 602, 605, 774 S.E.2d 330, 333 (2015) (citation omitted) ("[A] formal offer of proof is the *preferred* method and that the practice of making an informal offer of proof 'should not be encouraged[.]' ").

judgment ruling that the RMA was not binding. They argued, if the RMA is non-binding, Defendant had no right to charge them for assessments, and Plaintiffs had no duty to pay the assessments.

Based on the summary judgment ruling that the RMA was non-binding on Defendant, the trial court found the Plaintiffs' only legally recoverable damages were the refunds of the road maintenance assessments Plaintiffs paid to Defendant from 2009 to 2015.[6]

There is ample evidence in the record, including a spreadsheet relied on by both Plaintiffs and Defendant at trial to calculate damages, to determine the amounts paid by Plaintiffs to Defendant. Furthermore, as Plaintiffs conceded at trial, "[i]t's an undisputed fact the amounts that we paid in." In this instance, Plaintiffs' expert's opinion would not have assisted the trier of fact to answer the question of the amount of the refund, as it was easily ascertainable from the evidence presented at trial. As such, the trial court did not err or abuse its discretion in granting Defendant's motion *in limine*.[7]

---

[6] Plaintiffs argue, in their brief, the trial court erred in holding a refund was the only legally recoverable damages. This issue is not properly before our Court for review. *See Walker v. Walker*, 174 N.C. App. 778, 781, 624 S.E.2d 639, 640-41 (2005) (quoting *Bustle v. Rice*, 116 N.C. App. 658, 659, 449 S.E.2d 10, 11 (1994)).

[7] With respect to this issue, the amount of the refund awarded by the trial court may also be in question pending the answer of whether the RMA runs with the land. The trial court based the amount of assessments on the total amount of assessments paid by Plaintiffs to Defendant. This calculation was made under the inference the RMA did not apply; thus, it did not grant Defendant any authority to levy road maintenance assessments. If, upon further review, the lower court concludes the RMA runs with the land, Defendant has express authority to levy assessments and these calculations are in error.

C. Did the trial court err in granting summary judgment against Plaintiffs on the NCDCA claim?

A successful claim under the NCDCA satisfies all elements of a bifurcated analysis. The first prong contains three threshold steps. *Davis Lake Cmty. Ass'n, Inc. v. Feldmann*, 138 N.C. App. 292, 295, 530 S.E.2d 865, 868 (2000). The party alleging the claim must be a consumer. *Id.* at 295, 530 S.E.2d at 868; N.C. Gen. Stat § 75-50(1) (2017). The obligation must be a debt. *Id.* at 295, 530 S.E.2d at 868; N.C. Gen Stat. § 75-50(2). The party against whom the claim is being alleged must be a debt collector. *Id.* at 295, 530 S.E.2d at 868; N.C. Gen. Stat. § 75-50(3). Because we conclude Plaintiffs fail to establish the second prong of the test, we need not examine the first prong.

Once the first three requirements are satisfied, Plaintiffs must show: "(1) defendant committed an unfair or deceptive act or practice, (2) the action in question was in or affecting commerce, and (3) the act proximately caused injury to the plaintiff." *Krawiec v. Manly*, ___ N.C. ___, ___, 811 S.E.2d 542, ___ (2018) (quotation marks and citation omitted). We conclude element one of this second prong is dispositive.

"Whether a trade practice is unfair or deceptive usually depends upon the facts of each case and the impact the practice has in the marketplace." *Marshall v. Miller*, 302 N.C. 539, 548, 276 S.E.2d 397, 403 (1981) (citation omitted). "[A] practice is deceptive if it has the capacity or tendency to deceive . . . ." *Id.* at 548, 276 S.E.2d at

403 (citations omitted). As Plaintiffs assert, the NCDCA is contained within, and is an extension of, the Unfair and Deceptive Trade Practices Act ("UDTPA"). Likewise, Plaintiffs correctly contend the UDTPA contains no scienter requirement for actions brought under the act. *See id.* at 548, 276 S.E.2d at 403 (stating in a claim under the UDTPA "the intent of the actor is irrelevant"). While there is no scienter requirement, "[a] UDTPA action is distinct from a breach of contract action; a plaintiff must allege and prove egregious or aggravating circumstances to prevail on a UDTPA claim." *Wells Fargo Bank, N.A. v. Corneal*, 238 N.C. App. 192, 196, 767 S.E.2d 374, 377 (2014) (citation omitted).

Plaintiffs maintain, whether intentional or not, the overcharged assessments were a violation of the NCDCA because they were "deceptive representations." Plaintiffs specifically contend the assessments met the "deceptive representation" definition contained in N.C. Gen. Stat. § 75-54 (4): "[f]alsely representing the character, extent, or amount of a debt against a consumer or of its status in any legal proceeding[.]" N.C. Gen. Stat. § 75-54 (4) (2017).

However, at the summary judgment hearing, Plaintiffs presented no evidence of Defendant "[f]alsely representing the . . . amount of a debt against a consumer . . . *in any legal proceeding*[.]" *Id.* (emphasis added). Plaintiffs, at the hearing and on appeal, point only to Defendant's demands of assessments, which it erroneously calculated. While all parties agree Defendant's calculation of the amount

owed was in error, these assessments were not made *in any legal proceeding*, but instead in letters from Defendant to Plaintiffs. As this is Plaintiffs only assertion on appeal regarding the NCDCA claims, we hold the trial court did not err in granting summary judgment to Defendant on this claim and, accordingly, we affirm the trial court's grant of summary judgment.

V. Conclusion

For the foregoing reasons, we reverse the trial court's grant of summary judgment on the issue of whether the RMA runs with the land and otherwise affirm the court's order and judgment.

REVERSED AND REMANDED IN PART; AFFIRMED IN PART.

Judges BRYANT and CALABRIA concur.

Report per Rule 30(e).