IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-196

Filed: 17 September 2019

Mecklenburg County, No. 17 CVS 6057

MOLLIE VANDIVER and RHETT VANDIVER, Plaintiffs,

v.

KELLY HOUSTON and HEATHER HOUSTON, Defendants.

Appeal by plaintiffs and defendants from judgment entered 1 July 2018 by Judge Jesse B. Caldwell, III in Mecklenburg County Superior Court. Heard in the Court of Appeals 21 August 2019.

Shannon L. Vandiver, PLLC, by Shannon L. Vandiver, for plaintiff-appellants/cross-appellees.

Erwin Bishop Capitano & Moss, P.A., by J. Daniel Bishop, for defendant-appellees/cross-appellants.

YOUNG, Judge.

This appeal arises from a contract dispute. After review, we determine that this Court does not have authority to review the denial of a motion for summary judgment, and thus, we must reject all arguments challenging the failure of the trial court to grant summary judgment. The trial court did not err in awarding partial

summary judgment to the Houstons. The trial court did not err in finding that the summary judgment order in favor of the Houstons was not precluded by Chapter 47H. The trial court did not err in failing to award fees for discovery abuses under Rule 7 of the North Carolina Rules of Civil Procedure. The trial court did not abuse its discretion in denying the Houstons' motion for attorney's fees. The trial court did not err in failing to exclude evidence at trial. The trial court did not err in finding that the Vandivers breached an extended agreement and in finding that the Houstons' conduct did not rise to the level of unfair and deceptive practices. The trial court did not err in denying the Houstons fair rental value for unclean hands. The trial court did not err in its findings about the Houstons' tax reporting. Lastly, the trial court did not err in entering a discovery sanctions order. Therefore, we affirm.

I. Factual and Procedural History

In 2005 Appellants Mollie Vandiver and Rhett Vandiver (collectively "the Vandivers") rented a townhome owned by Kelly Houston and Heather Houston (collectively "the Houstons") in Charlotte, North Carolina. After a series of leases, in February 2009, the Vandivers entered into a contract to purchase the townhome, and made a $125,000 down payment. The one-page contract specified a price of $357,671.17, granted continuing possession to the Vandivers, and contemplated an exchange of the remaining principal balance of $232,671.17 and conveyance on 1 August 2010. The contract assigned the Vandivers responsibility for homeowner's

dues, assessments, maintenance and upgrades, to pay monthly interest on the remaining principal balance, taxes and insurance to the Houstons.

Before the closing date, the parties entered into another one-page sales contract setting a closing date of 31 December 2011. As that date neared, the parties entered into the Agreement at issue here in December 2011, which extended the date for payment of the purchase price balance and conveyance of the property to 1 April 2014. The Vandivers, however, have never tendered any of the purchase price balance. They continued living in the townhome, but they stopped making interest payments to the Houstons.

By the end of February 2017, the Vandivers were in arrears over $14,000. On 3 March 2018, the Vandivers' lawyer wrote the Houstons warning them against self-help and asserting that the Houstons had breached the Agreement by failing to deed the townhome, despite the fact that the Vandivers had not tendered the purchase price balance. The Vandivers' lawyer wrote again on 15 March 2017 demanding a general warranty deed and threatening litigation. The Vandivers sued on 30 March 2018, claiming to be entitled to a free-and-clear deed. The court entered a final judgment and order on 1 July 2018. The Vandivers appealed the 12 March 2018 Order on Cross Motions for Summary Judgment on the issue of breach of contract in favor of the Houstons; the 20 February 2018 Order on the Vandivers' and Houstons' Motions for Sanctions on the issues of discovery violations and attorney's fees which

granted the Vandivers' Motion for Sanctions in part, and the Houstons' Motion for Sanctions in part; the 19 December 2017 Order on the Vandivers' Motion for Partial Summary Judgment and the Houstons' Cross-Motion for Summary Judgment on the issue of breach of the lease agreement which was granted in favor of the Vandivers; and the 29 November 2017 Order Compelling Discovery in favor of the Vandivers. The Houstons appealed the final judgment and the 23 August 2018 Order sanctioning the Houstons on the issue of discovery violations in favor of the Vandivers.

II. Summary Judgment

A. Standard of Review

"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*, 361 N.C. 519, 523-24, 649 S.E.2d 382, 385 (2007)).

"[T]he denial of a motion for summary judgment is not reviewable during appeal from a final judgment rendered in a trial on the merits." *Harris v. Walden*, 314 N.C. 284, 286, 333 S.E.2d 254, 256 (1985) (emphasis added).

B. Denial of Summary Judgment

In their first argument, the Vandivers contend that the trial court erred in failing to grant their motions for summary judgment. We disagree.

As provided above, this Court does not have the authority to review the denial of a motion for summary judgment. Accordingly, we must reject all of the Vandivers' arguments challenging the failure of the trial court to grant them summary judgment.

C. Grant of Partial Summary Judgment

The Vandivers contend that the trial court erred in awarding partial summary judgment to the Houstons. We disagree.

The trial court found that the Vandivers breached the Agreement by failing to pay the balance of the purchase price, which excused the Houstons from the obligation to convey. The Vandivers argue that since the Houstons failed to allege a breach of the Agreement in their answer and counterclaims that any claim for breach was time-barred the day after filing the complaint. However, a material breach by the vendee under an executory land sale agreement excuses the vendor from the obligation to convey and bars any breach claim based on that obligation. *Fletcher v. Jones*, 314 N.C. 389, 395, 333 S.E.2d 731, 735-36 (1985) (it is a "basic principle [] of hornbook law" that the tender of the price and delivery of a deed are "concurrent conditions of performance"); *Brannock v. Fletcher*, 271 N.C. 65, 73, 155 S.E.2d 532, 541 (1967) ("until a vendee has made full payment he is not in condition to demand a conveyance of the land"); *McClure Lumber Co. v. Helmsman Constr., Inc.*, 160 N.C. App. 190, 198, 585 S.E.2d 234, 239 (2003) ("if either party to a bilateral contract

commits a material breach of the contract, the non-breaching party is excused from the obligation to perform further"). Since the Vandivers failed to pay the balance of the purchase price, there was no completed agreement. Since there was no completed agreement, the trial court did not err in awarding partial summary judgment to the Houstons.

Furthermore, the Vandivers argue that the trial court erred in concluding that they breached and that the Houstons were excused. The language of the contract provides that:

> The balance due of $232,671.17 will be held as a private mortgage on the property to be held by the sellers and the buyers will then make interest only payments to the sellers on the 1st day of each month in the amount of $1978 until the balance is paid in full on or before 4/1/2014.

According to the contract, both the Vandivers' and Houstons' performance obligations were due on or before 1 April 2014. The legal effect "is a case of so-called concurrent conditions," such that "a tender of his performance by either one of the parties is a condition precedent to the duty of performance by the other." *Jones*, 314 N.C. at 395, 333 S.E.2d at 736. It is undisputed that the Vandivers did not pay the balance of the purchase price. Consequently, the Houstons' obligation to convey the property did not mature. There was no genuine issue of material fact, and therefore, the trial court's grant of partial summary judgment was not error.

D. N.C. Gen. Stat. § 47H

The Vandivers contend that the summary judgment order in favor of the Houstons was precluded by Chapter 47H of the North Carolina General Statutes. We disagree.

In the Houstons' original answer and counterclaims they asserted that Chapter 47H was applicable. However, after obtaining new counsel the Houstons filed a notice of voluntary dismissal of this counterclaim. Chapter 47H applies to the sale of an interest in property where "the purchaser agrees to pay the purchase price in five or more payments exclusive of the down payment, if any. . ." N.C. Gen. Stat. § 47H-1(1) (2017). "The plain language of a statute is the primary indicator of legislative intent." *Winkler v. N.C. State Bd. of Plumbing*, __ N.C. App. __, 819 S.E.2d 105, 108 (2018); *see also N.C. Dep't of Corr. v. N.C. Med. Bd.*, 363 N.C. 189, 201, 675 S.E.2d 641, 649 (2009) ("Because the actual words of the legislature are the clearest manifestation of its intent, we give every word of the statute effect, presuming that the legislature carefully chose each word it used.") Here, Chapter 47H does not apply because there was no agreement for the Vandivers to pay the purchase price in five or more payments. Since the statute does not apply to this case, the statute could not have precluded the summary judgment order. There was no genuine issue of material fact, and therefore, the trial court's grant of summary judgment was not error.

III. Fees

A. Standard of Review

"A trial court's award of sanctions under Rule 37 will not be overturned on appeal absent an abuse of discretion." *Graham v. Rogers*, 121 N.C. App. 460, 465, 466 S.E.2d 290, 294 (1996). "[A]s Rule 37(a)(4) requires the award of expenses to be reasonable, the record must contain findings of fact to support the award of any expenses, including attorney's fees." *Benfield v. Benfield*, 89 N.C. App. 415, 422, 366 S.E.2d 500, 504 (1988).

B. Discovery Abuses

In their second argument, the Vandivers contend that the trial court erred in failing to award fees for discovery abuses under Rule 37 of the North Carolina Rules of Civil Procedure. We disagree.

The discovery orders entered 29 November 2017 and 20 February 2018 granted some relief to the Vandivers but did not award them attorneys' fees. Rule 37 provides that the court shall require the party whose conduct necessitated the motion to pay reasonable expenses including attorney's fees, unless the court finds opposition was substantially justified or other circumstances make an award of expenses unjust. N.C. Gen. Stat. § 1A-1, Rule 37(a)(4). The trial court denied attorney's fees because the Vandivers' counsel ignored a letter from the Houstons' counsel "attempting to resolve the current discovery dispute" and "perhaps much of the [Vandivers'] attorneys' fees in prosecuting the Vandivers' Motion for Sanctions could have been avoided." The trial court found that "based upon the totality of the circumstances of

this case an award of sanctions or attorneys' fees would be unjust." Accordingly, the trial court did not abuse its discretion and we affirm.

C. Motion for Attorney's Fees

On cross-appeal, the Houstons contend that the trial court abused its discretion in summarily denying the Houstons' motion for attorney's fees. We disagree.

The trial court found that the Houstons acted with unclean hands by continuing to require the Vandivers to pay repairs, maintenance and HOA payments, and continuing to require the Vandivers to make "mortgage" payments, representing that the Houstons held a "private mortgage" on the townhome. Based on this conduct, the Houstons cannot prove that it was unreasonable for the trial court to deny attorney's fees. Therefore, the trial court did not err.

IV. Evidence

A. Standard of Review

"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)). "A trial court may be reversed for abuse of discretion only upon a showing that its actions are manifestly

unsupported by reason . . . [or] upon a showing that [the trial court's decision] was so arbitrary that it could not have been the result of a reasoned decision." *White v. White*, 312 N.C. 770, 777, 324 S.E.2d 829, 833 (1985).

B. Analysis

In their third argument, the Vandivers contend that the trial court erred in failing to exclude evidence at trial. We disagree.

"[A]n appellant alleging improper admission of evidence has the burden of showing that it was unfairly prejudiced [by the trial court's error]." *McNabb v. Bryson City*, 82 N.C. App. 385, 389, 346 S.E.2d 285, 288 (1986). First, at issue are the 2009 and 2010 iterations of the 2011 purchase and sale agreement. The 13 September 2017 Order found the "2011 Agreement…superseded and voided" all prior agreements by its express provisions and the Houstons' allegations related thereto were barred by the statute of limitations and/or by the 2011 Agreement's language. However, the Vandivers failed to establish how the introduction of this evidence harmed their case. Consequently, the Vandivers cannot show that the trial court's decision was unreasonable, and we find that the trial court did not abuse its discretion.

Secondly, at issue are the text messages between Rhett Vandiver and Kelly Houston extending the contract from October 2015 through March 2017. The Vandivers argue hearsay, completeness and authentication objections, but make no

further arguments, record references, or establish how the introduction of this evidence harmed their case. "[A] party asserting [erroneous admission of evidence] must show that he was prejudiced by the trial court's error." *Id.* Therefore, the Vandivers cannot show that the trial court's decision was unreasonable, and we find that the trial court did not abuse its discretion.

V. Conduct

A. Standard of Review

"The standard of review on appeal from a judgment entered after a non-jury trial is 'whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment.' " *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176 (quoting *Sessler v. Marsh*, 144 N.C. App. 623, 628, 551 S.E.2d 160, 163, *disc. review denied*, 354 N.C. 365, 556 S.E.2d 577 (2001).

B. Breach and Extended Agreement

In their fourth argument, the Vandivers contend that the trial court erred in finding the Vandivers breached an extended agreement and in finding that the Houstons' conduct did not rise to the level of unfair and deceptive practices, nor lack good faith and fair dealing. We disagree.

The Vandivers contend that the Houstons did not allege a breach of contract claim, and therefore, the court should not have found that the Vandivers breached a

contract. However, the Houstons sought recovery for unjust enrichment for the Vandivers' uncompensated occupancy of the home. Since the Houstons failed to allege a breach of contract claim offensively they were not entitled to a breach of contract remedy. However, since a breach of contract did exist, the Houstons were entitled to a breach of contract remedy to avoid unjust enrichment by the Vandivers. There was competent evidence to support the trial court's findings of fact and the findings support the conclusion. Therefore, the trial court did not err.

The Vandivers further contend that the finding that the parties extended the Agreement by their conduct conflicted with the finding that the Vandivers were in breach. These two contentions are not mutually exclusive. Despite the Vandivers' breach, the parties were at liberty to continue their contractual obligation by continuing to occupy the home while the Houstons continued to accept the monthly interest and other costs. *Towery v. Carolina Dairy, Inc.*, 237 N.C. 544, 546, 75 S.E.2d 534, 536 (1953) (notwithstanding material breach, the aggrieved party "may elect to treat the contract as still subsisting and continue performance on his part"). There was competent evidence to support the trial court's findings of fact and the findings support the conclusion. Therefore, the trial court did not err.

C. Unfair and Deceptive Trade Practices

The Vandivers further contend that the trial court erred in finding that the Houstons' conduct did not rise to the level of unfair or deceptive, nor constitute a breach of the covenant of good faith and fair dealing. We disagree.

To succeed on a claim for Unfair and Deceptive Trade Practices, one must prove actual and reasonable reliance. *Bumpers v. Cmty. Bank of N. Va.*, 367 N.C. 81, 88, 747 S.E.2d 220, 226 (2013) ("a claim under section 75-1.1 stemming from an alleged misrepresentation does indeed require a plaintiff to demonstrate reliance"). The trial court found the Vandivers were intelligent and educated, that the language in the Agreement was clear and unambiguous, and that the Vandivers should not have had any trouble understanding their rights and obligations under the contract. The Vandivers cannot prove that they actually and reasonably relied on any misrepresentations by the Houstons as to the specific Agreement. There was competent evidence to support the trial court's findings of fact and the findings support the conclusion. Therefore, the trial court did not err.

D. Collateral Conduct

On cross-appeal, the Houstons contend that the trial court erred in denying the Houstons fair rental value for unclean hands. We disagree.

Aside from the Agreement itself is the issue of conduct by the parties. The trial court concluded that such conduct rose to the level of unclean hands but not unfair and deceptive trade practices. The trial court found eighteen separate findings of fact

dedicated to its legal conclusion that the Houstons acted with unclean hands, and the Houstons do not challenge those eighteen findings. The list of findings includes but is not limited to: the Houstons gave the Vandivers advice that made the Vandivers financially dependent on the Houstons; the Houstons represented to the townhome's HOA Board that the Vandivers were the owners and were required to pay all HOA related amounts; the Vandivers paid all fees, HOA dues, and repaired and maintained items in the townhome.

Instead, the Houstons argue that the findings of fact do not support the court's conclusion that the actions of the Houstons constitute unclean hands sufficient to bar their equitable claims for quantum meruit recovery. " 'He who comes into equity must come with clean hands,' is a well-established foundation principle upon which the equity powers of the courts of North Carolina rest." *Wade S. Dunbar Ins. Agency, Inc. v. Barber*, 147 N.C. App. 463, 471, 556 S.E.2d 331, 336 (2001). For all the reasons provided above, the trial court supports its finding that the Houstons acted with unclean hands. There was competent evidence to support the trial court's findings of fact and the findings support the conclusion. Therefore, the trial court did not err.

E. Extrinsic Evidence

On cross-appeal the Houstons further contend that the trial court's findings about the Houstons' tax reporting are also defective because they rest on improperly admitted evidence. We disagree.

The Houstons initially objected as to relevance with regard to evidence of the Houstons' tax returns. However, during Heather Houston's testimony, no objections were raised as to the tax-return related testimony. An error in admission of evidence is "cured when testimony of like import [is] admitted thereafter without objection." *State v. Van Landingham*, 283 N.C. 589, 603, 197 S.E.2d 539, 548 (1973). The failure to object to the evidence at trial constituted a waiver. Therefore, the findings about the Houstons' tax reports were not improperly admitted, and the trial court did not err.

VI. Discovery Sanctions

A. Standard of Review

"When reviewing a trial court's ruling on a discovery issue, our Court reviews the order of the trial court for an abuse of discretion." *Midkiff v. Compton*, 204 N.C. App. 21, 24, 693 S.E.2d 172, 175, *cert. denied*, 364 N.C. 326, 700 S.E.2d 922 (2010). "A trial court's award of sanctions under Rule 37 will not be overturned on appeal absent an abuse of discretion." *Graham v. Rogers*, 121 N.C. App. 460, 465, 466 S.E.2d 290, 294 (1996).

B. Analysis

On cross appeal, the Houstons further contend that the trial court erred in entering a discovery sanctions order without jurisdiction or evidentiary support. We disagree.

a. Jurisdiction

The Houstons have challenged the trial court's jurisdiction related to the 27 August 2018 Sanctions Order under N.C. Gen. Stat. § 1-294. That statute provides that a court "may proceed upon any…matter…not affected by the judgment appealed from." N.C. Gen. Stat. § 1-294 (2018). The 27 August 2018 Sanctions Order did not in any way affect the judgment appealed from, therefore, the trial court in this matter retained jurisdiction to enter the order. *See Corbett v. Corbett*, 67 N.C. App. 754, 313 S.E.2d 888 (1984) (finding trial court retained jurisdiction after appeal as to possession, which was separate from the judicially declared separation).

b. Sanction Order

The Houstons contend that the Sanctions Order overruled prior Superior Court Judges and that no new violation warranted the Sanctions Order. "The power to sanction disobedient parties…is longstanding and inherent. For the courts to function properly, it could not be otherwise." *In re Pedestrian Walkway Failure*, 173 N.C. App. 237, 247, 618 S.E.2d 819, 826 (2005) (internal citations omitted). The trial court noted in its 27 August 2018 Sanctions Order, the trial court "informed the parties in a written memorandum on June 25, 2018" of its ruling that the Houstons had willfully failed to provide discovery, warranting sanctions in the amount of all the Vandivers' discovery related fees and costs. The trial court's numerous findings in the 27 August 2018 Order amply support its conclusion that the Houstons

exhibited a pattern of discovery abuses for which there was no excuse, and related to which "sanctions [were] necessary and proper." The 27 August 2018 Order does not overrule any prior orders; rather it sanctioned the Houstons for their abuses and destructive conduct. The Houstons argue that no new violation warranted the sanction order. However, discovery efforts revealed the Houstons' misrepresentations were willful and intentional violations of discovery rules and the order of the trial court. Therefore, the trial court did not abuse its discretion in sanctioning the Houstons.

c. Fee Award

The Houstons contend that the trial court's award of $17,438.51 in fees and costs exceed the affidavit of record. However, the trial court's finding regarding the appropriate fees and costs expended related to the Houstons' discovery abuses were fully supported by affidavit. The trial court may properly rely on sources such as counsel's statements concerning the amount of time spent and the trial court's own observations about the attorney's skills. *Dyer v. State*, 331 N.C. 374, 378, 416 S.E.2d 1, 9 (1992). "Findings of the trial judge are conclusive on appeal if there is competent evidence to support them." *Id*. at 376, 416 S.E.2d at 5. Because the trial court made findings as to the nature and scope of the time and services expended, the skill required and the customary fee for like work and experience or ability of counsel, these findings are sufficient to determine the reasonableness of the fees and costs

awarded. *Dunn v. Canoy,* 180 N.C. App. 30, 35, 636 S.E.2d 243, 257 (2006). Therefore, the trial court did not abuse its discretion in its fees and costs award

AFFIRMED.

Judge ZACHARY concurs.

Judge Dillon concurs by separate opinion.

Report per Rule 30(e).

No. COA19-196 – *Vandiver v. Houston*

DILLON, Judge, concurring by separate opinion.

I concur with the majority. I write separately to expound on the nature of the relationship between the parties created by their "long-term" real estate contract which is the subject of their dispute.

I. Relevant Facts

Until 2011, the Vandivers were tenants in property owned by the Houstons. In 2011, the parties entered into a contract for the Vandivers' purchase of the property from the Houstons. The agreement called for a purchase price of $357,671.17, payable as follows: (1) $125,000 up-front down payment, (2) followed by monthly interest-only payments of $1,430[1], and (3) the balance of $232,671.17 due by April 2014, at which time the Houstons would deed the property over to the Vandivers. Under the agreement, the Vandivers were allowed to remain in the property but would pay the Houstons $549 per month, essentially assuming responsibility for costs associated with the property (e.g., property taxes and insurance).

[1] Interest was based on an interest rate of 7.375% per annum on the outstanding balance of the purchase price. Here, the balance was $357,671.17 MINUS $125,000.00 WHICH EQUALS $232,671.17. The monthly interest payment is calculated as follows: $232,671.17 x 7.375% ÷ 12 = $1,430.

The Vandivers did not pay any of the balance of the purchase price by April 2014, but remained in the property and continued making monthly payments of interest and of the $549 monthly property expenses through mid-2016.

In mid-2016, though, the Vandivers fell behind in making the monthly interest payments and, at no time, ever made any payment towards the outstanding $232,671.17 principal balance remaining on the purchase price. The Vandivers, however, brought this action, claiming that they were nonetheless entitled to a deed from the Houstons conveying title in the property to them. The Houstons countered, seeking to quiet title and for other relief.

II. "Long-term" Contracts

The 2011 agreement between the parties was not a lease agreement, but rather was what is known as a "long-term" contract for the sale of real estate.

There are essentially two types of real estate purchase contracts: interim contracts and long-term contracts. *See Webster's Real Estate Law in North Carolina*, § 9.05 (2019). Most real estate contracts today are interim contracts, whereby the buyer makes a down payment and then pays the balance at closing, which occurs within a relatively short period of time. *Id.* The buyer typically funds the balance due at closing with proceeds from a loan made by a financial institution and then takes possession.

A long-term contract, though, is a financing device whereby *the seller* loans the buyer the balance of the purchase price, retaining title as security until the buyer has made all of the payments. *Id.* A "long-term" contract is also referred to sometimes as an "installment land contract" or a "contract for "deed." *Boyd v. Watts*, 316 N.C. 622, 627, 342 S.E.2d 840, 842 (1986). Unlike with interim contracts, with a long-term contract, the seller does not receive all of the purchase price until well after receiving the down payment, if any, as the seller has agreed to receive the balance over a long period of time. Also, unlike with interim contracts, with a long-term contract, the buyer does not receive a deed to the property until paying the entire balance of the loan, as the seller retains title as security for the loan.

Long-term contracts are not frequently used today, and most of our jurisprudence on the subject comes from older cases. However, the North Carolina Board of Law Examiners recently chose a fact pattern involving a long-term contract for its real property essay question on its July 2015 bar examination. But when the Board later published, and made available for purchase, each essay question and best answers for that exam, it noted that *no bar applicant* who took the exam that summer had submitted an answer that warranted inclusion in the publication.[2] Specifically, the grader of the real estate essay question stated that:

[2] The Board of Law Examiners sold copies of the essay portion of recent bar exams along with the best answer provided by bar takers to the public. Note, though, that North Carolina moved to the Uniform Bar Exam in 2019, no longer devoting a full day to testing on North Carolina-specific law.

> A primary purpose of the essay portion of the North Carolina bar examination is to test for knowledge of specific North Carolina law. As no answer submitted [to the real property essay question] sufficiently illustrated the specific North Carolina law raised therein as to warrant publication, the grader of [this question] has provided the following answer as a reference guide for unsuccessful applicants.

Board of Law Examiners of the State of North Carolina, *Select Answers to the July 2015 North Carolina Bar Examination* (2015). The grader then explained the law regarding long-term contracts, citing *Webster's* and the seminal North Carolina Supreme Court decision, *Brannock v. Fletcher*, 271 N.C. 65, 155 S.E.2d 532 (1967).

III. Analysis

The 2011 agreement created a relationship between the parties here similar to a mortgagor-mortgagee relationship, rather than a landlord-tenant relationship. *Brannock* at 70-71, 155 S.E.2d at 539 ("It has been held repeatedly that the relationship between vendor and vendee in [a long-term] agreement for the sale and purchase of land is substantially that subsisting between mortgagee and mortgagor, and governed by the same general rules." (internal citations omitted)). For instance, because the Vandivers were no longer technically tenants, they could not be removed by a summary ejectment proceeding. *Id.* at 70, 155 S.E.2d at 538-39 ("A vendee is not, however, such a tenant as may be evicted by summary ejectment under G.S. 42-26[.]"). And like a mortgagor, the Vandivers had the right, for some period after default, to redeem the property by paying all sums due. *Id.* at 73, 155 S.E.2d at 540

("[The purchasers] were still entitled – even if they were in arrears – to tender to [the sellers] the unpaid balance of the purchase price within a reasonable time[.]").

The relationship between the parties to a long-term contract, however, is not *exactly* like the relationship between a mortgagor and a mortgagee. In a true mortgage relationship, the debtor owns an equity of redemption which may only be divested through a foreclosure auction sale, whereby the debtor may perhaps recoup some of its equity, if any, if the winning bid exceeds the debt. That is, North Carolina does not recognize a "strict foreclosure" process, whereby the mortgagee/lender may seek that the collateral be conveyed to it without the need of a judicial auction sale. *See Banks v. Hunter*, 251 N.C. App. 528, 534, 796 S.E.2d 361, 367 (2017) ("[Strict foreclosure] is no longer recognized in North Carolina."). But in the relationship created by a long-term contract, our Supreme Court has recognized that any right the debtor has to redemption may be divested simply by filing an action to quiet title, *id.* at 73, 155 S.E.2d at 541 ("[Seller] may bring a suit for foreclosure of the vendee's interest or to quiet title[.]"), and the seller is entitled to retain any monies paid by the debtor prior to the debtor's default. *Id.* at 72, 155 S.E.2d at 540 ("It is settled law that . . . [the defaulting purchaser] is not entitled to recover the amount theretofore paid pursuant to [the] terms [of the long-term contract].").

Accordingly, I agree with the trial court and the majority that the Houstons were entitled to possession based on their quiet title counterclaim and to retain all

monies paid by the Vandivers. I also agree with the majority that the trial court did not commit reversible error in the handling of this matter.