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ARTICLES & INSIGHTS

ABOUT THE AUTHOR



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NC Court of Appeals Confirms Judgments Follow Real Property After Transfer

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As too many judgment creditors know (or sometimes quickly learn), a judgment is often not worth much more than the paper on which it is printed. One important exception, however, is when the judgment debtor owns real property. In North Carolina, a judgment automatically attaches to any real property owned by the judgment debtor in the county in which the judgment is entered. Also, judgments can be “transcribed” to any county in the state where the debtor owns real property, and it will attach to that real property once it has been transcribed. Any subsequent purchaser of the property takes it subject to the judgment. In practice, that means that the judgment creditor is often paid out of the proceeds of the sale of real property to which its judgment attaches, very much like the way a mortgage is paid off when someone sells a house. However, when that does not happen, the judgment creditor can still look to that property to enforce its judgment.

North Carolina Court of Appeals confirmed the long-standing rule that real property “is not relieved of [a] judgment lien by a transfer of the debtor’s title.”

In a recent case, the North Carolina Court of Appeals confirmed the long-standing rule that real property “is not relieved of [a] judgment lien by a transfer of the debtor’s title.” In [Chisum Construction v. Elliot](#), the Court of Appeals determined that the trial court should have allowed the judgment creditor to execute on real property that the judgment debtor had owned when the judgment was entered but had since transferred to a third party. The current owner objected to the judgment creditor’s execution on the property he now owned, and the trial court held that the judgment creditor’s only recourse was to bring an entirely separate lawsuit claiming the transfer of the real property should be set aside under the Uniform Voidable Transfer Act (“UVTA”). The Court of Appeals noted that the UVTA is applicable in situations where a creditor transfers property to keep certain property out of the reach of creditors but that in this case, the transfer did not affect the judgment creditor’s ability to execute on the real property because the judgment had attached before the transfer. The Court of Appeals also rejected the current owner’s claim that the execution would somehow violate his due process rights, noting that a purchaser of land takes it subject to the rights of senior

secured creditors.

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The Court of Appeals went on to clarify that if the property in question were sold to satisfy the judgment, the successful purchaser would take the property subject to any liens superior to the judgment (such as a senior deed of trust) and cautioned that “bidders are at their peril to discover what superior liens are of record.” In addition to confirming a powerful tool for collecting on judgments, this case also stands as an important reminder of the necessity of a thorough title search before purchasing real property, which may be subject to claims of other creditors.

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