

Civil Law Update

New Legislation

Consumer Protection Law

S.L. 2015-179 (S 679) makes several changes to GS Ch. 53, Art. 15, the *Consumer Finance Act*. The new law specifically authorizes a finance company to charge, and a court to award, court costs and “other reasonable and bona fide costs incurred in the course of bringing” an action to collect a loan made under this Act. The new law also specifies what is required of a lender in order to comply with a requirement, newly imposed in 2013, to “take reasonable precaution to prevent making loans” to military service members with a rank of E4 or below on active duty without notifying the debtor’s commanding officer and complying with other protections imposed by the Act.

S.L. 2015-177 (S 678) makes several changes to GS Ch. 75, Art. 2, which prohibits certain acts by *debt collectors* who are not collection agencies (which are regulated by GS Ch. 58, Art. 70). The law contains a general prohibition against debt collectors communicating about the debt with third parties, subject to several exceptions. One exception is communication solely for the purpose of obtaining information about the debtor’s location. The statute expands upon the scope of that exception, indicating that (1) questions about the debtor’s home, place of employment, and telephone numbers are permissible, (2) that inquiries to any particular third party are limited to 1/week or 3/30-day-period, and (3) the collector should not reveal that the person owes a debt. The statute also provides that a debt collector may collect as part of the debt filing fees, service of process fees, or other court costs actually incurred.

Domestic Violence

S.L. 2015-62 (H 465) authorizes AOC to develop a statewide program for *electronic filing* of all documents “filed, issued, registered, or served” in actions brought under GS Ch. 50C and 50B. The new law also provides that, effective Dec. 1, 2015, hearings held to consider *ex parte* relief under those statutes may be held by video conferencing.

S.L. 2015-176 (S 192) adds provisions to GS Chs 50B and 50C to specify that “[l]aw enforcement agencies shall accept receipt of copies of the order issued by the clerk of court by electronic or facsimile transmission for service on defendants.”

Involuntary Commitment

S.L. 2015-176 (S 192) adds new GS 122C-210.3, which provides that “a custody order entered by the clerk or magistrate pursuant to this Chapter may be delivered to the law enforcement officer by *electronic or facsimile transmission*.”

Landlord-Tenant Law

S.L. 2015-55 (H 315) corrects a minor but troublesome provision in GS 42-36.2(a), which sets out the procedure a sheriff must follow *in executing a writ of possession* in a summary ejectment action. Old law provided that when a landlord asked that the tenant’s property be left on the premises and the premises padlocked, the sheriff should return the writ of possession “unexecuted.” In reality, the sheriff has executed the writ by padlocking the premises, and the amendment to the statute reflects that. Effective Oct. 1, 2015.

S.L. 2015-178 (H 174) makes several changes to the law related to *foreclosure of property occupied by a tenant*. (1) First, GS 42-45.2 is amended to specify that a tenant who receives notice of foreclosure of rental property may
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opt to terminate the lease effective at least 10 days but no more than 90 days after date of sale by giving written notice to the landlord. This right to early termination ends if the mortgagor cures the default prior to the tenant giving notice. (2) Puts in place provisions similar to the federal Protecting Tenants at Foreclosure Act (which expired on 12/31/2014) to the effect that a purchaser at foreclosure of property occupied by a bona fide tenant takes subject to the lease (up to a maximum of a term of 1 year), unless the buyer plans to use the property as a primary residence. This provision applies only if the occupant is not the debtor, or the debtor's spouse, child or parent, the lease is written, and the terms involve rent at FRV unless subsidized. (3) For leases falling outside the scope of # (2) above, the purchaser must give the tenant 90 days' notice before seeking a writ of possession from the clerk. (4) If the rental property has an imminently dangerous condition at the time of purchase, the buyer can obtain immediate possession of the property. While the new law pertains primarily to writs of possession issued by clerks of court pursuant to GS 45-21.29, one provision of the law raises a question about the role magistrates may play: GS 45-21.33A(f) provides "Nothing in this section shall be construed to limit the remedies available to the purchaser for breaches of the lease terms by the tenant."

Marriage

S.L. 2015-75 (S 2) allows magistrates to recuse themselves for a minimum six-month period from performing all marriages "based upon any sincerely held religious objection." A recusal becomes effective upon notice to the Chief District Court Judge and continues until the magistrate rescinds it in writing. The new law provides that in the event all magistrates in a county recuse themselves, AOC is responsible for ensuring that another magistrate is available to perform marriages within that county for a minimum 10 hours/week over at least 3 business days/week. The new law also addresses determination of benefits for magistrates who left office on or after 10/6/2014 and resumed office within 90 days of 6/11/2015.

Recent Cases

Landlord-Tenant Law

Stikeleather Realty v. Broadway , (Opinion #1 filed 5/19/15, Opinion #2 filed 8/4/15). *Stikeleather II* reaches the same result as the (apparently withdrawn) opinion in *Stikeleather I*, but the Court's reasoning is far more confined to the specific facts of that case and thus the decision is of much less general significance. Essentially the Court reminds us that, while evidence of damages caused by failure to comply with the RRAA may be less than mathematically precise, it is nevertheless necessary to state the reasoning underlying a determination of damages. Furthermore, damages are appropriate only if the evidence establishes breach of the RRAA, which was not the case here.

Domestic Violence

Stancill v. Stancill , 773 SE2d 890 (6/16/2015). Reiterates that court should NOT base determination of whether plaintiff was placed in fear of continued harassment that causes substantial emotional distress on whether "plaintiff's actual subjective fear is objectively reasonable under the circumstances."

Thomas v. Williams 773 SE2d 900 (7/7/2015). Discussion of what constitutes a "dating relationship" under GS 50B-1(b)(6). Court must consider facts of particular situation to make this determination, including the following: (1) Did relationship involve more than mere casual acquaintance? (2) How long did parties date before alleged acts of DV? (3) Nature & frequency of parties' interactions? (4) Expectations of parties re relationship? (5) Parties' statements or behavior before others affirming relationship ?