



2013009123

HAYWOOD CO, NC FEE \$170.00
PRESENTED & RECORDED:

10-09-2013 12:36:36 PM

SHERRI C. ROGERS
REGISTER OF DEEDS
BY: SHERRI C. ROGERS
REGISTER OF DEEDS

BK: RB 855

PG: 2397-2447

State of North Carolina

13 SP 252

County of Haywood

AFFIDAVIT

Transcription of "Hearing" on August 26, 2013,
Disposition of Surplus Funds, Terry Ramey, and
Transcription of "Hearing" on October 4, 2013,
Disposition of Surplus Funds, related to case files
12 CV 1396, 12 SP 441 and 13 SP 252.

Monroe A. Miller Jr.

_____ /

Monroe A. Miller Jr., being first duly sworn deposes and says:

1. I am a Haywood County Taxpayer, and have lived in Haywood County since 2004.
2. I have an interest in the foreclosures that have taken place in Haywood County, and have particular interest in David Francis, Haywood County (elected) Tax Collector, Mark Pinkston, a lawyer with Van Winkle Law Firm in Asheville, North Carolina, and June L. Ray, Clerk of Superior Court in Haywood County.
3. I attended two (2) foreclosure hearings at the Haywood County Justice Center related to Terry Ramey's foreclosure; the first on August 26, 2013, and the second, presumably a continuation, on October 4, 2013, case number 13 SP 252. Each hearing was conducted by June Ray, Clerk of Superior Court, acting as a Probate Judge. Each hearing dealt with Surplus Funds and who got a slice of the pie.
4. Subsequent from the first hearing on August 26, 2013 up until the second hearing on October 4, 2013, the case file folder 13 SP 252 was never updated with the results and/or findings of the first hearing on August 26, 2013. It was never understood if the hearing on August 26, 2013 was a hearing or not, and if the subsequent hearing on October 4, 2013 was another separate hearing, a continuation of the August 26, 2013 hearing, or, in fact, a hearing at all. George Hyler, Terry Ramey's lawyer, told Terry Ramey after the second hearing that was not a hearing.
5. At this time, this Affidavit exists as the only evidence that "hearings" were conducted on August 26, 2013 and October 4, 2013, by June Ray, Clerk of Superior Court, regarding the disposition of Surplus Funds from the Trustee Foreclosure on Terry Ramey.
6. I had requested permission from June Ray prior to the 11:00am August 26, 2013 meeting make an audio recording of the meeting, but she snapped "NO!".

7. This Affidavit includes a transcription from my handwritten notes taken on August 26, 2013, and additionally on October 4, 2013, and are included and attached to this Affidavit. The Affidavit is signed, notarized, and recorded with the Register of Deeds. [Note: My commentary in square brackets [...].

8. The following is transcribed from two (2) pages of handwritten notes taken August 26, 2013.

11:00am June Ray came in to the probate hearing room, located next to Sam Hyde's office, in the Justice Center. I asked if she would allow the proceedings to be recorded. She snapped: **NO!**

Sometime before the meeting started, Jeff Norris and Art (Hayes) Singleton were milling about outside the hearing room but within the area behind the glass windows. Neither ever did make an appearance inside the hearing room.

11:12am Waiting...

11:19am Started. The following is a list of people in attendance. [I did not know some of these people at the time, but was able to later identify some of them].

Four (4) lawyer looking types.

1. James Robertson, City of Waynesville Tax Collector,
2. Woody Griffin (sp) lawyer for James Robertson and City of Waynesville,
3. Jerad Davis, [works at Jeff Norris firm, young lawyer.]

George Hyler, Ramey's lawyer,
Terry Ramey, Brandy Lewellyn,
Sam Hyde (in and out of the hearing),

Case number 13SP252.

Hayes Singleton paid (county) taxes, [in Terry Ramey's name, in order to get the deed transferred]. [Why did that have to happen, unless property was sold AS IS? See Attachments 9 and 10].

Davis: Remedies worth proceedings. [Presumably the reason Jerad Davis was there. Singleton wanted more money out of the Surplus Funds.]

Davis: Want a continuance, a short period of time, 7-10 days.

Davis: Wanted to attack Surplus Funds in any way.

Hylar: Did not want to extend courtesy. [Singleton not so courteous when he and Jeff Norris ordered Ramey off the property the day the foreclosure became effective.]

Ray: "Go Ahead" ["I am inclined to agree with you", with the hearing, a smack-down for Davis].

Ray: Marlin Leasing Served?

Hylar: Yes.

Hylar: No response from Marlin Leasing. Did not know if they were still in business. Sent notice on 8/9/2013 via USPS. [There seemed to be great confusion as to whether this was sent via Certified Mail]. Sent to Durham?

Ray: Concern whether lawyer is still representing Marlin Leasing. Foreign Judgement, 2005.

Hylar: States clear. 105-386 [NCGS], Sale subject to all liens, taxes, encumbrances. Not aware of Special Assessments.

Hylar: Don't think any question that proceeds should go to Ramey. Note - garnishment - Waynesville City Tax Collector - does not apply to funds. Statues clear as can be.

Ray: Attachment is a whole different animal.

Hylar: Can't attach through back-door. No liability for Ramey. A little late once the deed transferred. End.

Griffith: Determine ownership of funds. Attachment. Not seeking fund under Surplus Funds Statue.

Hylar: Sale was 4/16/2013. At that point, taxes go with property. Ramey does not own taxes on that property. Council going through back-door which he can't go through the front door.

Ray: Biggest concern Marlin, whether they have been served.

Hylar: Council of Record is Council of Record until they withdraw [Marlin Leasing]. Rule 5, not rule 4. Don't have to have proceedings unless we gave them notice, which we did. No green card [can be produced].

Ray: In light of that, wait until we see service.

Hylar: Then if you are going to hold funds, only hold garnishment, not rest.
\$13K - Garnishment
\$43K - Marlin Leasing

11:37am End. [Meeting appears to have been ended temporarily, or suspended...].

9. The handwritten notes for the August 26, 2013 hearing are ATTACHMENT 1.
10. The following is transcribed from one (1) pages of handwritten notes taken October 4, 2013. June Ray appeared to be reading from a prepared text during the entire meeting.

11:05: The following persons attended this hearing:
Deputy Mike Price, Head of Security, Justice Center
June Ray, Clerk / Probate Judge
Woody Griffith, lawyer, Town of Waynesville
Terry Ramey
George Hylar
Jeff Norris, lawyer for Hayes Singleton
James Robertson, Tax Collector, Town of Waynesville
[Absent - anyone from Marlin Leasing].

11:07: Start

Hylar: Have another hearing for Party.

Hylar No one is here from Marlin Leasing. [Hylar had spoken to lawyers from Marlin Leasing days before, and must have been expecting someone from Marlin Leasing to be there, re: Terry Ramey].

Ray: Before we start, I received a written request to record this meeting by Mr. Miller. Since he is an associate of Terry Ramey's and not a party to the Party's, his request is denied.

Ray: Surplus Funds at \$67, 448.37.

Findings of fact, 45 - 21 - 31, August 8, 2013.

All parties have been served.

Hylar, Robertson, Griffith.

Marlin Leasing answered petition, attachment. July 26, \$13K, Town of Waynesville.

Smith Debnam, August 27 and September 3, amount of \$35,535.

Sheriff received execution (more than once).

Marlin, attorney fees shall be paid. Court may allow fees to be paid.

Town of Waynesville be paid plus interest.

Marline to be paid \$35K plus interest, all fees be paid.

Remaining money to Ramey and Hylar. Hylar's fees to be paid from Surplus Funds.

Hylar: [Hylar requested that June Ray hold releasing her order until he saw it.]

Ray: [June Ray agreed.]

End.

11. The handwritten notes for the October 4 hearing are ATTACHMENT 2.
12. George Hylar's (Terry Ramey's lawyer) demeanor during the second hearing was decidedly different from his demeanor and actions demonstrated during the first meeting. During the first meeting, it appeared that Hylar was truly representing his client's interests, that of Terry Ramey. During the second meeting, it appeared as though Hylar's client was now June Ray, and Hylar sat passively by as June Ray carved up pieces of the Surplus Funds pie and give to Marlin Leasing, James Robertson and Woody Griffith of the Town of Waynesville, and now Hylar himself, to get his lawyer fees. This was the first point of time Ramey became aware that Hylar was going to get paid through a disbursement of the Surplus Funds.
13. During a meeting with Sam Hyde, Terry Ramey and I, in the office of Sam Hyde on September 4, 2013, (meeting recorded), Sam Hyde confessed that he knew Rusty McLean had a meeting with David Francis to butt in line with Rusty McLean's Trustees Deed foreclosure (12 SP 441) ahead of the Sheriff's Deed Foreclosure (12 CV 1396). The recording was transferred to a DVD and provided to Waynesville Police Chief Bill Hollingsed. Sam Hyde subsequently held the Trustees Deed Foreclosure on Terry Ramey on January 31, 2013.

14. A **MOTION TO DISMISS & ANSWER** is included as ATTACHMENT 3. This motion created by Rusty McLean and signed off by Mark Pinkston, Van Winkle, moves to dismiss this action (original Sheriff's Deed Foreclosure, Case File 12 CVD 1396, for failure to state a claim upon which may be granted against **TOWN OF WAYNESVILLE (TAXING AUTHORITY)** STATES RESOURCES CORP (LIENHOLDER), RUSSELL L. MCLEAN, III (LIENHOLDER), AMERICAN TIRE DISTRIBUTORS, INC. (LIENHOLDER), BALL, BARDEN & BELL, P.A. (LIENHOLDER), **MARLIN LEASING CORPORATION, (LIENHOLDER)**.
15. A **VOLUNTARY DISMISSAL WITHOUT PREJUDICE** is included as ATTACHMENT 4. This hereby voluntarily dismisses without prejudice Haywood County's action against **TOWN OF WAYNESVILLE (TAXING AUTHORITY)** STATES RESOURCES CORP (LIENHOLDER), RUSSELL L. MCLEAN, III (LIENHOLDER), AMERICAN TIRE DISTRIBUTORS, INC. (LIENHOLDER), BALL, BARDEN & BELL, P.A. (LIENHOLDER), **MARLIN LEASING CORPORATION, (LIENHOLDER)**.
16. My application for APPLICATION TO UTILIZE STILL PHOTOGRAPHY OR ELECTRONIC EQUIPMENT WITHIN THE COURTHOUSE FOR RECORDING OR PRESENTATION PURPOSES is ATTACHMENT 5. This application was submitted September 17, 2013, for the upcoming second Ramey hearing. The hearing was held on October 4, 2013, and June L. Ray rejected my application, solely based on my not being an immediate party to these proceedings.
17. The COMPLAINT TAX FORECLOSURE NON JURY, filed December 14, 2012 is shown as ATTACHMENT 6. At the bottom of page three (3), there is a table of "Taxes currently Due and Payable:". Attention is drawn to an anomaly in the tax amount for the year 2011. The average tax rate was approximately \$1,300 per year, but in the year 2011, the amount was \$4,447.47
18. Terry Ramey and I requested tax bill information from the Haywood County Tax Office on September 17, 2013. We were advised by employees behind the counter that only Tracy Wells or David Francis could print out detailed tax sheets relating to foreclosures. No one else could.
19. Tracy wells supplied several sheets, of which two (2) pages for the year 2011 form ATTACHMENT 7. This Tax Bill Inquiry lists ten (10) Line items (Ln). Line 3, 6 and 8 indicate ADD'L MP ATTY FEES ADDED PER DBF. Attorney fees are added to an individuals personal property tax bill. PER DBF is presumably David B. Francis, and MP is presumably Mark Pinkston. All of these items were placed on the tax bill in 2012 or 2013, and backdated back to the 2011 tax year.
20. An ORDER ALLOWING FORECLOSURE signed by Sam Hyde, Assistant Clerk of Superior Court, filed on February 26, 2013, is ATTACHMENT 8. The second page, item Six (6) states: "That the Promissory Note and underlying obligation is not a "sub prime" loan or "Home Loan" loan as defined in N.C.G.S. Chapter 45-101, and is not subject to notice requirements as set forth in N.C.G.S. Chapter 45-102.
21. The notice, or lack of notice for Marlin Leasing [re: transcript of June Ray hearing on August 26, 2013, and October 4, 2013] did not appear to be a factor after all. Marlin Leasing was not required to be noticed.
22. The original Public Notice for Foreclosure, written by Clarence Dickson, a lawyer and **appointed by Rusty McLean as a substitute Trustee** for Terry Ramey, and also a business partner of Rusty McLean, appeared in the Mountaineer, a local paper, on April 1, 2013. ATTACHMENT 9. It stated, in part, "All bidders bid for the property AS IS on the date of sale and the high bidder assumes the risk of loss or deterioration after the sale. Absolutely no warranties are made as to the condition, value or title of the property. All bidders are advised that they should obtain independent counsel to examine record title as the property is sold subject to prior record interests. ..."

23. Federal Case Law: 67A Am. Jur. 2d Sales § 771, American Jurisprudence, Second Edition is ATTACHMENT 10. It states: "Notwithstanding the restrictive requirements of the Uniform Commercial Code on disclaimer of implied warranties of merchantability and fitness for the particular purpose, all implied warranties are excluded by expressions like "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty."
24. Hayes Singleton, the final bidder in the Trustee Foreclosure, paid all county taxes through his lawyer, Jeff Norris, as partially shown as Item 10 on the Tax Bill Inquiry obtained from Tracy Wells at the Haywood County Tax Department, ATTACHMENT 7.
25. Hayes Singleton, through his lawyer, Jeff Norris, not only paid back Haywood County back taxes on the property at 706Hazelwood Avenue (foreclosed property), he paid the back-dated attorney feeds on Tracy Wells printout, ATTACHMENT 7, and in addition, paid back taxes owed on mobile homes. See ATTACHMENT 11, another tax bill inquiry, this being printed out by a tax employee other than Tracy Wells, and refer to line items 1, 2, and 3. These mobile homes had nothing to do with the property at 706 Hazelwood, but were required to be paid by the county in order to transfer the deed, even after the Voluntary Dismissal Without Prejudice, ATTACHMENT 4.
26. Marlin Leasing was not represented by a lawyer at either hearing, on August 26, 2013 nor October 4, 2013.
27. Marlin Leasing entered AMENDED ANSWER AND DEFENSES OF MARLIN LEASING CORP, ATTACHMENT 11, filed September 16, 2013. It stated it's claim to proceeds was against Terry Ramey and Ramey Wrecker Service, and not the new title holder of the land. Marlin Leasing referenced Haywood County case file 05 CV 104.
28. ATTACHMENT 13 is the original ruling held in New Jersey on August 24, 2004, which states: "IT IS on this 24 day of August, 2004 that default judgement is hereby entered in favor of Plaintiff Marlin Leasing Corporation and against Defendant, Terry E. Ramey **d/b/a** Ramey Wrecker Service, in the amount of \$20,313.51 plus taxed costs of suit". Note that the judgement stated **d/b/a** (doing business as), not **and** Ramey Wrecker Service, as ATTACHMENT 12 indicates. It is noted on the judgement, "If this is a money judgement or order, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of Superior Court in Trenton along with a \$35.00 fee".
29. At the August 26, 2013 hearing, James Robertson and Woody Griffith were present, only as observers.
30. Terry Ramey had a garnishment issued against him by James Robertson, Tax Collector for the Town of Waynesville, and signed by June Ray. ATTACHMENT 14.
31. Marlin Leasing, actually, Byron Saintsing, lawyer for Marlin Leasing, recommended that the Town of Waynesville get a slice out of the Surplus Funds pie. Why is it any of Marlin Leasing's business that the Town of Waynesville receive a portion of this disbursement? Is this the "back door" George Hyler referred to at the first hearing on August 26, 2013?
32. Several letters (via e-mail) had been sent to June L. Ray requesting various forms of public information and questions, virtually non answered. These letters related to various recent foreclosures by Haywood County Tax Collector, David Francis. ATTACHMENT13 is a letter dated July 10, 2013.
33. ATTACHMENT 16 is a letter to June Ray dated July 16, 2013.

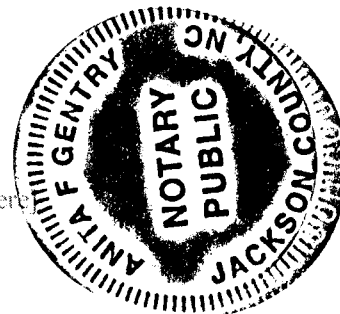
34. ATTACHMENT 17 is a letter to June Ray dated August 14, 2013.
35. ATTACHMENT 18 is a letter to Byron Hickox, Code Enforcement Official, Town of Waynesville, NC regarding an anonymous complaint filed indirectly against Terry Ramey regarding land owned by Judy Lanning Johnson, June Ray's sister.
36. ATTACHMENT 19 is a letter to June Ray dated September 11, 2013.
37. ATTACHMENT 20 is a letter to June Ray dated October 3, 2013.

I swear under pains and penalties of perjury that the above is true and accurate.

This document is hereby recorded pursuant to Rules of Federal Evidence, 901 and 902. The preceding items of evidence are self-authenticating or identifying evidence; they require no extrinsic evidence of authenticity in order to be admitted.

Monroe A Miller Jr
Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
(828) 456-3718
October 8, 2013

[Notary Stamp Here]



Jurat

Signed and sworn before me Anita F. Gentry, on this day, the 9 day of October, 2013.

Signed: Anita F. Gentry

Printed: Anita F. Gentry

My commission expires on October 22, 2016

AUG 26 2013

Hearing - June Ray

①

11:00 **June Ray** - allow Proceeding to be Reversed? **NO!** **Aug 26, 2013**
11:12 Waiting...
11:19

13SP252

Paid Taxes - Singleton
Remedies worth Proceeding
Continue Short Period of Time 7-10 days
Attach Surplus Funds in any way

Singleton
Jeff Morris
(4) other lawyers looking to try
Hyler
Remy + Brandy
James Robertson
Same Hyler
Younger Guy - Tax Suit
Wardie Griffin
Town of Waynesville
Dana DAVIS - Morris guy

Hyler - Do not want to extend Courtroom. **GO AHEAD!**
Ray - **SMACK-DOWN**

Marlin Leasing - Served? Yes

Hyler No Response from Marlin Leasing Don't know if they are
DURHAM
E/A Notice, USPC
J. Business

Ray Concern whether lawyer is still representing Marlin Leasing
Foreign Judgment 2005.

Hyler Status Clear. 105-385 Sale Subject to all Sales Taxes, Amherst, etc.
Not aware of Special Assessments.

Don't think any question that Proceeds should go to Home
Dale - Garnish - Waynesville Tax Collector - Not apply to former
Status Clear as can be.

Ray Attachment is a whole different animal.

Hyler Can't attach thru the Bail Note No liability for money,
a little late once deed transferred
END.

Griffin Determine Ownership of Funds - ATTACHMENT
Not Subject fund under Surplus Fund Statute.

Hyler Sale 4/13. At that Point, Taxes go with Property
Remy Owns mortgage Taxes on that Property

Council going thru Bail Note which he can't go thru the first mor.

Ray Biggest Concern Marlin, whether they have been Served

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

Monroe A. Miller Jr.

ATTACHMENT I

2

Hyler - Council of Record is Council of Record (with they will draw
Rule 5, not Rule 4. Don't have to have Present unless
we gave them Notice, which we did.
No green card.

Ray
In light of that, what kind see service, then
If you are going to hold funds, only hold garnishment, Not Best
13K garnish mat
43K

11:37 End

Monroe A Miller Jr.
10/8/13

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

ATTACHMENT 2

Ramey Hearing
(New Hearing or Continuation?)

10/4/13

11:05

11:07

Have another Hearing for Party

NO one is here

Request Denied - Wake Party to other

Price

Woody Griffin

Ramey

Hylar

(Norris)

James Robinson

June Ray

Ray Surplus Fines 67,448.37

Fundings of Fact

45-21-31 Aug 8, '13

all Parties have been served

Hylar, Robinson, Griffin

Marlin hearing answered petition. Attached

July 26 13k

Town of Waynesville

Smith Bedone Aug 27

Sept 3

to

35535

Sheriff Received Operative

Marlin - attorney fees be paid, Court may allow fees to be paid

- Town of Waynesville be Paid + Interest
- Marlin 35k + Interest + all Fees be paid.
- Remain Money To Ramey + Hylar.

Monroe A Miller Jr.

10/8/13

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786

JUL 26 2013

FILED

STATE OF NORTH CAROLINA
HAYWOOD COUNTY

2013 MAR 11 PM 4:36

GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO.: 12 CVD 1396

COUNTY OF HAYWOOD, A BODY)
POLITIC AND CORPORATE,)
Plaintiff)

vs.)

TERRY E. RAMEY AND ROBIN)
MORGAN RAMEY (OWNERS),)
TOWN OF WAYNESVILLE)
(TAXING AUTHORITY),)
STATES RESOURCES CORP.)
(LIENHOLDER), RUSSELL L.)
MCLEAN, III (LIENHOLDER),)
AMERICAN TIRE DISTRIBUTORS, INC.)
(LIENHOLDER), BALL, BARDEN &)
BELL, P.A. (LIENHOLDER), MARLIN)
LEASING CORPORATION)
(LIENHOLDER),)
Defendant.)

MOTION TO DISMISS & ANSWER

NOW COMES Defendant, Russell L. McLean, III, and answers Plaintiff's Complaint as follows:

MOTION TO DISMISS

Defendant Russell L. McLean, III hereby moves to dismiss this action pursuant to Rule 12(b)(6) for failure to state a claim upon which may be granted.

ANSWER

1. Upon information and belief, admitted.
2. Upon information and belief, admitted.
3. Upon information and belief, admitted.
4. Admitted.
5. Upon information and belief, admitted.

ATTACHMENT 3

JUL 26 2013 ✓

6. Upon information and belief, admitted.
7. Upon information and belief, admitted.
8. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
9. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
10. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
11. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
12. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
13. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
14. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
15. Admitted as to Defendant Russell L. McLean, III's interest in said property, as to the remaining Defendants, this answering Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.
16. Defendant lacks sufficient information to form a belief as to the truth or falsity of the allegation and therefore denies same.

WHEREFORE, having fully prayed, Defendant Russell L. McLean, III seeks the following:

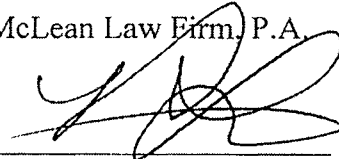
1. That the Defendant's Motion be granted.
2. That the relief sought in the Plaintiff's complaint be denied and the Plaintiff have and recover nothing by way of its complaint.
3. For a trial by jury.

JUL 26 2013 ✓

4. For such other and further relief as the court may deem just and proper.

This the 11th day of March, 2013.

McLean Law Firm, P.A.



Russell L. McLean, III
Pro Se
Post Office Box 4
Waynesville, NC 28786
Tel: (828) 452-2896
Fax: (828) 356-6517

RECORDED
INDEXED

2013 MAR 11 PM 4:36

FILED

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing by placing same in the U.S. mail, properly addressed and postage prepaid upon the following:

Mark A. Pinkston
Van Winkle, Buck, Wall,
Starnes and Davis, P.A.
11 North Market Street
Asheville, NC 28801

This the 11th day of March, 2013.



Russell L. McLean, III

JUL 26 2013 ✓

STATE OF NORTH CAROLINA IN THE GENERAL COURT OF JUSTICE

COUNTY OF HAYWOOD DISTRICT COURT DIVISION

12 CvD 1396

COUNTY OF HAYWOOD, A BODY POLITIC AND CORPORATE,

Plaintiff,

vs.

TERRY E. RAMEY AND ROBIN MORGAN RAMEY (OWNERS), TOWN OF WAYNESVILLE (TAXING AUTHORITY), STATES RESOURCES CORP. (LIENHOLDER), RUSSELL L. MCLEAN, III (LIENHOLDER), AMERICAN TIRE DISTRIBUTORS, INC. (LIENHOLDER), BALL, BARDEN, & BELL, PA (LIENHOLDER), MARLIN LEASING CORPORATION (LIENHOLDER),

Defendant(s).

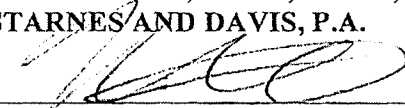
VOLUNTARY DISMISSAL WITHOUT PREJUDICE

Please take notice that Plaintiff, County of Haywood, A Body Politic and Corporate, hereby voluntarily dismisses without prejudice its action against Defendants, TERRY E. RAMEY AND ROBIN MORGAN RAMEY (OWNERS), TOWN OF WAYNESVILLE (TAXING AUTHORITY), STATES RESOURCES CORP. (LIENHOLDER), RUSSELL L. MCLEAN, III (LIENHOLDER), AMERICAN TIRE DISTRIBUTORS, INC. (LIENHOLDER), BALL, BARDEN, & BELL, PA (LIENHOLDER), MARLIN LEASING CORPORATION (LIENHOLDER), pursuant to Rule 41(a) of the North Carolina Rules of Civil Procedure.

THIS the 22nd day of May, 2013.

**VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.**

By:


Mark A. Pinkston
Attorney for Plaintiff
11 North Market Street (28801)
Post Office Box 7376
Asheville, North Carolina 28802-7376
(828) 258-2991 (Telephone)
(828) 257-2767 (Facsimile)

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD/JACKSON

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NUMBER 135P252

HAYWOOD CO.,

JUNE RAY)

VS)

TERRY RAMEY)

APPLICATION TO UTILIZE STILL
PHOTOGRAPHY OR ELECTRONIC
EQUIPMENT WITHIN THE COURTHOUSE
FOR RECORDING OR PRESENTATION
PURPOSES

I, MONROE A. MILLER JR., media representative other am requesting permission to
(please check the letter below that corresponds to your request)

A. Utilize still photography video recording equipment audio recording equipment for
 broadcast/print presentation purposes in the above-captioned case currently scheduled for
PENDING in Courtroom with Judge JUNE RAY (must be
authorized by the Presiding Trial Judge):

or

B. Utilize still photography video recording equipment audio recording equipment for
 broadcast/print presentation purposes within the following areas of the courthouse controlled by
the Court System (must be authorized by the
Presiding Trial Judge or Clerk of Superior Court Office)

On the day of , 20 .

I have read and understand the Local Rules for the 30B Judicial District. **I understand that in A and B, I must submit this application to the Presiding Judge or his/her other designee, who will facilitate obtaining the appropriate authorized signature.** I agree to follow those rules as well as any other rules that may be established. I understand that my failure to follow said rules will subject me to the contempt power of the Court or to such sanctions the Court deems appropriate.

This the 17 day of Sept, 20 13.

OCT 4 2013
Refused!

Monroe A. Miller Jr.

Signature of Applicant

Signature of Camera Operator (if different from above)

JUL 26 2013

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF HAYWOOD

DISTRICT COURT DIVISION

2012 DEC 14 AM 10:04

HAYWOOD COUNTY, C.S.C.

12 CVD 12CV 01396

COUNTY OF HAYWOOD, A BODY
POLITIC AND CORPORATE,

Plaintiff,

vs.

TERRY E. RAMEY AND ROBIN
MORGAN RAMEY (OWNERS), TOWN OF
WAYNESVILLE (TAXING AUTHORITY),
STATES RESOURCES CORP.
(LIENHOLDER), RUSSELL L. MCLEAN,
III (LIENHOLDER), AMERICAN TIRE
DISTRIBUTORS, INC. (LIENHOLDER),
BALL, BARDEN, & BELL, PA
(LIENHOLDER), MARLIN LEASING
CORPORATION (LIENHOLDER),

Defendants.

COMPLAINT
TAX FORECLOSURE
NON JURY

NOW COMES the Plaintiff, Haywood County, complaining of the Defendants, and alleges and says as follows:

1. That the Plaintiff is a body politic and corporate of North Carolina and as such has the power and authority to assess, levy, and collect taxes against real and personal property located within its boundaries in accordance with the laws of the State of North Carolina.
2. That upon information and belief, Defendant, Terry E. Ramey and Robin Morgan Ramey (collectively "Owner Defendants"), are citizens and residents of Haywood County, North Carolina.
3. That upon information and belief, Defendant, States Resources Corp., is a corporation organized and existing under and by virtue of the laws of the State of Iowa conducting business in the State of North Carolina.
4. That upon information and belief, Defendant, Russell L. McLean, III, is a citizen and resident of Haywood County, North Carolina.
5. That upon information and belief, Defendant, American Tire Distributors, Inc., is a corporation organized and existing under and by virtue of the laws of the State of Delaware conducting business in the State of North Carolina.

ATTACHMENT 6

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6. That upon information and belief, Ball, Barden, & Bell, P.A., is a Professional Association organized and existing under and by virtue of the laws of the State of North Carolina.
7. That upon information and belief, Defendant, Marlin Leasing Corporation, is a corporation organized and existing under and by virtue of the laws of the State of New Jersey conducting business in the State of North Carolina.
8. That Plaintiff is advised that the Town of Waynesville may have a claim of lien for taxes and/or special assessments due it upon the real estate hereinafter described, and for that reason said defendant is made a party to this action.
9. That the Owner Defendants duly listed for taxes the real estate hereinafter described for the year(s) 2008-2011 or the real estate was lawfully listed for taxation for those years on behalf of the Owner Defendants, and plaintiff lawfully assessed the real estate and levied taxes thereon for these years, which taxes remain unpaid as will hereinafter appear.
10. That there are due and owing to the Plaintiff, taxes which have been duly assessed and levied and that, by operation of Sections 105-355 and 105-356 of the General Statutes, constitute a first lien against the real estate hereinafter described, subject to the provisions of the Revenue Act prescribing the priority of the lien for State taxes.
11. That the amount of the lien including interest thereon as computed under the provisions of Section 105-360 of the General Statutes for each of the years indicated, together with any penalties and or cost charged thereon, not including applicable costs and attorney's fees, is set out below following the description of each tract, parcel, or lot to which the lien applies:

The real estate is shown on the Haywood County Tax Records as Parcel Identification Number ("PIN") 8605-73-1634, and is that certain parcel, tract or lot of real estate situated in Waynesville Township, Haywood County, North Carolina described in Deed Book 449, at Page 1123, Haywood County, North Carolina Registry and is more particularly described as follows:

BEGINNING at a point in the Easternmost comer of the Ruth Noland Burgin property (89E-185, Haywood County), which point is the Southernmost corner of the W. F. Duncan property (Deed Book 129, Page 498. Haywood County Registry), and running thence on a common boundary with the said Ruth Noland Burgin South 15 deg. 03 min. 21 sec. East 187.97 feet to a point in the center of the asphalt street known as West Main Street (formerly Hazelwood, North Carolina; now Waynesville. North Carolina), and running thence with said West Main Street two (2) calls as follows: on a curve to the right (clockwise) with a radius of 386.04 feet, an arc distance of 106.62 feet (chord bearing North 78 deg. 10 min. 35 sec. West, chord 106.28 feet); thence North 70 deg. 15 min. 53 sec.

JUL 26 2013

West 237.88 feet to a point in the West Main Street bridge over Richland Creek, and running thence with the center of Richland Creek eleven (11) calls as follows: North 27 deg. 33 min. 41 sec. West 452.29 feet to a point; thence North 23 deg. 36 min. 35 sec. West 51.42 feet to a point; thence North 14 deg. 22 min. 28 sec. East 59.61 feet to a point; thence North 57 deg. 11 min. 28 sec. East 63.16 feet to a point; thence North 57 deg. 11 min. 48 sec. East 68.49 feet to a point; thence North 28 deg. 24 min. 22 sec. East 36.41 feet to a point; thence North 37 deg. 29 min. 23 sec. East 33.13 feet to a point; thence North 16 deg. 41 min. 32 sec. East 66.35 feet to a point; thence North 27 deg. 43 min. 59 sec. East 53.58 feet to a point; thence North 29 deg. 50 min. 40 sec. East 49.67 feet to a point; thence North 27 deg. 58 min. 18 sec. East 91.09 feet to a point; thence leaving the center of Richland Creek and running on a common boundary with Robert E. Forga (Deed Book 274, Page 66, Haywood County Registry), South 16 deg. 34 min. 20 sec. East 44.49 feet to a point in the Northwesternmost corner of Nicholas Mastriana (Deed Book 375, Page 1045 and Deed Book 376, Page 846, Haywood County Registry), and running thence on a common boundary first with said Mastriana and thence with Robert E. Forga (Deed Book 274, Page 66, Haywood County Registry). South 16 deg. 34 min. 20 sec. East 188.67 feet to a point marked by an iron set in the Westernmost corner of Lloyd Blanton (Deed Book 115, Page 269, Haywood County Registry), and running thence on a common boundary with said Lloyd Blanton, South 15 deg. 53 min. 50 sec. East 250.01 feet to a point marked by an iron found in the Westernmost corner of Jarvis B. Brock (Deed Book 378, Page 719, Haywood County Registry), and running thence on a common boundary with said Jarvis B. Brock, Paul Brock Heirs (Deed Book 77, Page 192, Haywood County Registry), Naomi Palmer Hall (Deed Book 178, Page 518, Haywood County Registry), Frank W. Duncan (Deed Book 343, Page 433, Haywood County Registry), and W. F. Duncan (Deed Book 129, Page 498, Haywood County Registry), South 16 deg. 57 min. 36 sec. East 343.48 feet to the point of BEGINNING. Said tract containing 5.810 acres, according to the plat of survey titled, "Plat Prepared for Terry E. & Robin M. Ramey", by J. Randy Herron, R.L.S., dated September 6, 1995, being drawing number 2233-422-A.

SUBJECT TO any and all easements, covenants, conditions, rights of way, and restrictions of record.

Taxes currently Due and Payable:

Tax Year	Amount (including Interest)
2008	\$1,207.87
2009	\$1,214.47
2010	\$414.47
2011	\$4,447.47
2012	\$1,364.08
Total Taxes and Interest Due:	\$8,711.32

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12. That all of such taxes remain due and owing to Plaintiff, although demand has been made for the payment thereof.
13. That Legal Fees, Costs and other charges allowed by Law are not included in the amounts set forth above, which in addition to taxes and interest, must be paid in order for this action to be dismissed. For a current payoff, please contact Mark A. Pinkston at 828-258-2991.
14. That taxes for subsequent years may accrue or become due upon the property before termination of this action; that such subsequently accruing taxes will also constitute a lien upon the real estate; that Plaintiff will present to the Court the certificate of the Tax Collector for Haywood County with respect to such taxes at the time such judgment is prayed for herein and will ask that such subsequent taxes be included in the judgment. A credit will be given for any and all amounts paid by Owner Defendants.
15. The interest of the Defendant(s) above-named other than the Owner Defendants, as disclosed by the public records of Haywood County, North Carolina, is set out in the Appendix attached hereto, and is incorporated herein by reference as if fully set forth herein.
16. In the event that payment of taxes is tendered before the judgment of sale is confirmed, Defendants are given notice that before this action will be dismissed, the costs of this action and of collection must be paid, including attorney's fees; and that Defendants have a right to a hearing before the Court on the amount of attorney's fees.

WHEREFORE, the Plaintiff, respectfully prays the Court as follows:

1. That the Plaintiff have and recover a judgment against the Owner Defendants hereinabove described for the amount of the taxes, interest, costs and attorney's fees due it as set out above plus any subsequently accruing taxes and penalties, interest, attorney's fees and costs thereon as allowed by law and the costs of this action less any amounts paid by the owner of the property; and that said taxes, interest, attorney's fees and costs be declared a first lien upon the real estate hereinabove described.
2. That a Commissioner be appointed to sell the Property hereinabove described after due advertisement and in accordance with law and under the direction of this Court, and to deliver to the Purchaser at such sale a Deed to said real estate in fee simple, free and clear of all encumbrances, and that the interests and the equities of redemption of any person or entity having any interest in and to said Property be forever barred and foreclosed.


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3. That the Commissioner be ordered to pay from the proceeds of the sale of the Property the taxes, penalties, interest, attorney's fees and costs due the Plaintiff, together with the costs of this action and the Commissioner's fees, and to pay the surplus, if any, to such parties that may be entitled thereto or pay it into the Court for the benefit of said parties.
4. For such other and further relief as the Court may deem just and proper.

THIS THE 19th day of December, 2012.

VAN WINKLE, BUCK, WALL,
STARNES AND DAVIS, P.A.

By:


MARK A. PINKSTON
North Carolina State Bar Number: 16789
Attorney for Plaintiff
11 North Market Street (28801)
Post Office Box 7376
Asheville, North Carolina 28802-7376
(828) 258-2991 (Telephone)
(828) 257-2767 (Facsimile)
(26066-375)

JUL 26 2013 v

APPENDIXDEEDS OF TRUST

1. Deed of Trust executed by Terry E. Ramey and his wife, Robin Morgan Ramey to TRSTE, Inc., Trustee for First Union National Bank of North Carolina recorded in Book 374, Page 2090, of the Haywood County Register of Deeds in the amount of \$162,000.00 ("Deed of Trust I"). Deed of Trust I was subsequently assigned to States Resources Corp. by Assignment of Mortgage and other Recorded Documents recorded in Book 673, at Page 228 of the Haywood County, North Carolina Registry.
2. Deed of Trust executed by Terry E. Ramey, a single man and Robin Morgan Ramey, a single woman to Michael T. Jordan, attorney at law, Trustee for Russell L. McLean, III recorded in Book RB 758, Page 514, of the Haywood County Register of Deeds in the amount of \$52,195.74.

JUDGMENTS

1. Judgment against Terry Ramey d/b/a Ramey Wrecker Service, the Defendant therein, in favor of American Tire Distributors, Inc., the Plaintiff therein, in the amount of \$ 14,465.56 plus interest and costs, File No. 03 CVD 376 of the Wilson County Clerk of Court's Office and Transcript File Number 03 M 112 of the Haywood County Clerk of Court's Office.
2. Judgment against Terry Ramey and Robin Ramey, the Defendants therein, in favor of Ball, Barden, & Bell, PA, the Plaintiff therein, in the amount of \$2,990.84 plus interest and costs, File No. 03 CVD 272 of the Buncombe County Clerk of Court's Office and Transcript File Number 03 M 77 of the Haywood County Clerk of Court's Office.
3. Judgment against Terry Ramey, the Defendant therein, in favor of Marlin Leasing Corporation, the Plaintiff therein, in the amount of \$22,452.00 plus interest and costs, File No. 05 CVS 104 of the Haywood County Clerk of Court's Office.

OTHER LIENS AND INTERESTS

Town of Waynesville taxes owing for 2003-2012 in the amount of \$12,507.98 as of 12/13/2012.

Tax Collections

ATTACHMENT 7

STCSBINQF

MVBP

Tax Bill Inquiry

Bill Nbr: 11A8605731634 Bill Date: 09/16/11 Bill Status: C
 Account: 38996 RAMEY, TERRY E ET UX RAMEY, ROBIN M Bill Class: RR
 Desc/Loc: 706 HAZELWOOD AVE Bill Type: R
 Parcel ID:
 Map/Blk/Lt: 1-119/1 4 District: 15 TOWN OF WAYNESV Tax Year(s): 11
 Real Value: 252,000
 Pers Value: Principal: 0.00
 Exemptions: 0 Interest: 0.00 as of 09/10/13
 Deferments: 0 Bal Due: 0.00

Ln	Eff Date	Trans	Amount	Paid By	Reference
1	03/15/12	CREDIT	4.00		A0*03*12*3322
2	07/23/12	MSG(CAM)		DEMAND LTR 7/16/12	
3	11/30/12	MSG(CAM)		(MP) ATTY FEES ADDED 2990.56; TO BE PAID	
4	11/30/12	MSG(CAM)		IN ORDER TO RECORD THE TRUSTEE'S DEED	
5+	11/30/12	AFTERCHA	2,990.56		ADMC*11*12*1

Enter detail (/), (D)ate, receipt (Ln#), re(P)ort, more(#+), (T)rans, (I)mage, or return<CR>

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MVBP Tax Bill Inquiry

Bill Nbr: 11A8605731634 Bill Date: 09/16/11 Bill Status: C
 Account: 38996 RAMEY, TERRY E ET UX RAMEY, ROBIN M Bill Class: RR
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 Map/Blk/Lt: 1-119/1 4 District: 15 TOWN OF WAYNESV Tax Year(s): 11
 Real Value: 252,000
 Pers Value: Principal: 0.00
 Exemptions: 0 Interest: 0.00 as of 09/10/13
 Deferments: 0 Bal Due: 0.00

Ln	Eff Date:	Trans:	Amount:	Paid By:	Reference:
6	04/26/13	MSG(TLW)		(\$1500) ADD'L (MP) ATTY FEES	ADDED PER (DBF)
7	04/26/13	AFTERCHA	1,500.00		ADMF*04*13*54
8	07/23/13	MSG(CAM)		(\$750) ADD'L (MP) ATTY FEES	ADDED PER (DBF)
9	07/23/13	AFTERCHA	750.00		ADMC*07*13*1
10	07/23/13	COUNTER	6,697.43-	JEFFREY W NORRIS/PLLC	J07*23*13*26.1

Enter detail (/), (D)ate, receipt(Ln#), re(P)ort, more(#+), (T)rans, (I)mage, or return<CR>

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David Bruce Francis

JUL 26 2013

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK
12-SP-441

IN THE MATTER OF THE FORECLOSURE by)
CLARENCE H. DICKSON, III, Substitute)
Trustee of a Deed of Trust executed by)
TERRY E. RAMEY (single) and)
ROBIN MORGAN RAMEY (single), dated)
April 13, 2009, and recorded on)
April 20, 2009, in Book 758 at Page)
514, of the Haywood County Public)
Registry.)

ORDER ALLOWING
FORECLOSURE

FILED
JUL 26 2013
CLERK OF SUPERIOR COURT
HAYWOOD COUNTY, N.C.

TO: CLARENCE H. DICKSON, III, Substitute Trustee

THIS CAUSE, heard before the undersigned Assistant Clerk of Superior Court of Haywood County, North Carolina, on January 31, 2013, pursuant to N.C.G.S Chapter 45 to determine whether foreclosure shall be allowed. The Clerk, having heard the evidence and having examined the relevant documents, does hereby find as follows:

1. The Notice of Hearing was properly served upon the interested parties, pursuant to Orders to Serve issued on December 4, 2012, and January 3, 2013. This service occurred at least Ten (10) days prior to the date of this hearing in accordance with the service of process requirements as set forth in the North Carolina General Statutes, and that the service requirement in this action has been satisfied in accordance with North Carolina law.
2. On April 20, 2009, a properly executed Deed of Trust to Michael T. Jordan, Trustee, securing a properly executed and delivered Promissory Note in the original amount of \$52,195.74 in favor of Russell L. McLean, III, was recorded in the Office of the Register of Deeds for Haywood County, North Carolina. On December 4, 2012, Clarence H. Dickson, III, was substituted as Trustee (Book 836 at Page 1024).
3. That certain Promissory Note dated April 13, 2009, and properly secured with that Deed of Trust recorded April 20,

ATTACHMENT 8

JUL 26 2013 ✓

2009, in Book 758 at Page 514, is evidence of a valid debt against the makers thereof.

4. That Deed of Trust recorded April 20, 2009 in Book 758 at Page 514 contains a valid power of sale vested in the Trustee, granting to the Trustee the right to foreclose in the event of a default in the secured obligation.

5. A default has occurred under the provisions of the Promissory Note and Deed of Trust, and the holder thereof has, within Thirty (30) days of the issue of the Notice of Hearing in this matter, caused a written statement which claimed default, accelerated the debt, and indicated the amount of principal, interest and expenses owed as of the date of said statement. And such default entitles the Acting Trustee to foreclose and expose the subject property to a public sale to satisfy the debt.

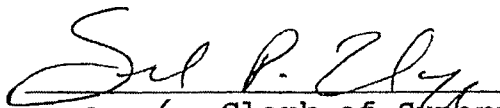
6. That the Promissory Note and underlying obligation is not a "sub prime" loan or "Home Loan" loan as defined in N.C.G.S. Chapter 45-101, and is not subject to notice requirements as set forth in N.C.G.S. Chapter 45-102.

7. That the foreclosure is not prohibited by N.C.G.S. 45-21.12A.

NOW, THEREFORE, it is hereby ORDERED, ADJUSTED AND DECREED that Clarence H. Dickson, III, Substitute Trustee, may proceed to foreclose under the power of sale granted under that Deed of Trust recorded on April 20, 2009, in Book 758 at Page 514 of the Haywood County Register's Office, after giving Notice of Sale to all parties entitled to such notice in accordance with the terms of the Deed of Trust and pursuant to the process set forth in the North Carolina General Statutes.

Issued this 31st day of January, 2013.

Signed 2/26/13



Clerk of Superior Court

ATTACHMENT 9

April 1, 2013

JUL 27 2013

will be required to make payment for any such county land transfer tax. A cash deposit of 5% of the purchase price will be required at the time of the sale. Any successful bidder shall be required to tender the full balance of the purchase price so bid in cash or certified check at the time the Substitute Trustee tenders to him a deed for the property or attempts to tender such deed, and should said successful bidder fail to pay the full balance purchase price so bid at that time, he shall remain liable on his bid as provided for in North Carolina General Statutes Section 45-21.30 (d) and (e). This sale will be held open ten (10) days for upset bids as required by law.

Residential real property with less than 15 rental units; an order for possession of the property may be issued pursuant to G.S. 45-21.29 in favor of the purchaser and against the party or parties in possession by the clerk of superior court of the county in which the property is sold. Any person who occupies the property pursuant to a rental agreement entered into or renewed on or after October 1, 2007, may, after receiving notice of sale, terminate the rental agreement upon 10 days written notice to the landlord. Upon termination of a rental agreement, the tenant is liable for rent due under the rental agreement prorated to the effective date of the termination.

Dated: 1/14/13
Philip A. Glass, Substitute Trustee
Nodell, Glass & Haskell, L.L.P.
Posted on 3/12/13
No. 31386 April 1 and 8, 2013

**STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD
FILE NUMBER:
12-SP-441
NOTICE OF SALE**

TAKE NOTICE THAT: CLARENCE H. DICKSON, III, Substitute Trustee under that Deed of Trust from TERRY F. RAMEY and ROBIN MORGAN RAMEY, Grantors, to Michael T. Jordan, Trustee for Russell L. McLean, III, Noteholder, dated the 13th day of April, 2009, and recorded in the Office of the Haywood County Register of Deeds in Deed of Trust Book 758 at Page 514, has begun proceedings to FORECLOSE under that Deed of Trust, and under and by virtue of the power of sale contained therein and an Order entered by the Clerk of Superior Court of said County will sell the below described property at public auction as follows:

1. The property to be sold is described as follows: 5.81 acres, more or less at 706 Hazelwood Avenue, Waynesville, North Carolina, as described in Deed of Trust Book 758 at Page 514, Haywood County Registry.
2. Improvements include the buildings, if any, built on that land.
3. The tax description of the property is: PIN 8605-73 1634.
4. The property will be sold by Trustee at 10:00 o'clock A.M. on the 16th day of April, 2013, to the highest bidder for CASH at the door of the Haywood County Justice Center, 285 North Main Street, Waynesville, North Carolina.
5. The sale will be made subject to taxes, liens, encumbrances, and restrictions of record superior to this Deed of Trust, and unpaid ad valorem taxes. All bidders bid for

the property AS IS on the date of sale and the high bidder assumes the risk of loss or deterioration after the sale. Absolutely no warranties are made as to the condition, value or title of the property. All bidders are advised that they should obtain independent counsel to examine record title as the property is sold subject to prior record interests. Noteholders have reserved the right to withdraw the sale up to and until the Deed is delivered by Trustee. The highest bidder will be required to deposit IN CASH OR BY CASHIER'S CHECK with Trustee at the date and time of the sale, five percent (5%) of the bid or \$7,500.00, whichever is greater.

6. If you are a tenant residing in the property, be advised that an Order for Possession of the property may be issued in favor of the purchaser. Also, if your lease began or was renewed on or after October 1, 2007, be advised that you may terminate the rental agreement upon 10 days written notice to the landlord. You may be liable for rent due under the agreement prorated to the effective date of the termination. This the 25 day of March, 2013.

CLARENCE H. DICKSON, III
Substitute Trustee
Post Office Box 1308
Waynesville, North Carolina 28786
(704) 456-8082
No. 31395 April 1 and 8, 2013

§ 771. Sale “as is” or in similar terms; as excluding..., 67A Am. Jur. 2d Sales...

67A Am. Jur. 2d Sales § 771

American Jurisprudence, Second Edition
Database updated August 2013
Sales

Laura Dietz, J.D., Alan Jacobs, J.D., Theresa Leming, J.D., William Lindsley, J.D., Anne E. Melley, J.D., of the staff of the National Legal Research Group, Inc., Anne Payne, J.D., Jaqualin Friend Peterson, J.D., of the staff of the National Legal Research Group, Inc., Jeffrey J. Shampo, J.D., Lisa Zakolski, J.D.

X. Warranties

F. Exclusion or Modification of Warranties

1. In General

c. Exclusion of Implied Warranties and Warranties of Title and Against Encumbrances and Infringement

Topic Summary Correlation Table References

§ 771. Sale “as is” or in similar terms; as excluding implied warranties

West’s Key Number Digest

West’s Key Number Digest, Sales ~~267~~

A.L.R. Library

Who is a “consumer” entitled to protection of state deceptive trade practice and consumer protection acts, 63 A.L.R. 5th 1

Liability on implied warranties in sale of used motor vehicle, 47 A.L.R. 5th 677

Construction and effect of affirmative provision in contract of sale by which purchaser agrees to take article “as is,” in the condition in which it is, or equivalent term, 24 A.L.R. 3d 465

Forms

Provision of sales agreement—Disclaimer of implied warranties—Goods sold “as is,” Am. Jur. Legal Forms 2d, Uniform Commercial Code Art 2—Sales § 253:633

Provision of sales agreement—Disclaimer of implied warranties—Goods sold “as is”—Machinery, equipment and fixtures, Am. Jur. Legal Forms 2d, Uniform Commercial Code Art 2—Sales § 253:634

Answer—Defense—Implied warranties excluded by “as is” clause in contract, Am. Jur. Pleading and Practice Forms, Commercial Code Art 2—Sales §§ 2:293, 2:294

Instruction to jury—“As is” or “with all faults” clause as excluding implied warranty, Am. Jur. Pleading and Practice Forms, Commercial Code Art 2—Sales § 2:300

Notwithstanding the restrictive requirements of the Uniform Commercial Code on disclaimer of implied warranties of merchantability and fitness for the particular purpose,¹ all implied warranties are excluded by expressions like “as is,” “with all faults,” or other language which in common understanding calls the buyer’s attention to the exclusion of warranties and makes plain that there is no implied warranty.²

Comment:

The Code recognizes that such terms, in ordinary commercial usage, are understood to mean that the buyer takes the entire risk as to the quality of the goods involved.³

§ 771. Sale "as is" or in similar terms; as excluding..., 67A Am. Jur. 2d Sales...**Observation:**

There is a conflict as to whether the expression "in their present condition" is¹ or is not⁵ equivalent to "as is," "with all faults," and similar expressions.

Under the law of Louisiana, which has not adopted Article 2, statutory warranties are implied in all sales⁶ and "as is," even in the sale of secondhand goods, merely puts the buyer on notice that the warranty is significantly qualified.²

Observation:

It has been held that the phrase "sold as is" is not ambiguous and a buyer therefore cannot introduce parol evidence to contradict its meaning.⁸

In determining whether an "as is" sales agreement is enforceable, the nature of the transaction and the totality of the circumstances surrounding the agreement must be considered, and where the "as is" clause is an important part of the basis of the bargain, not an incidental or boilerplate provision, and is entered into by parties of relatively equal bargaining position, a buyer's affirmation and agreement that the seller's representations are not being relied on should be given effect.⁹

CUMULATIVE SUPPLEMENT**Statutes:**

UCC § 2-316(2), which deals with the exclusion or modification of warranties, was amended in 2003 to provide that a disclaimer of the implied warranty of merchantability in a consumer contract (defined in new UCC § 2-103(1)(d) as a contract between a merchant seller and a consumer) must be in a record, be conspicuous, and use understandable language that states "[T]he seller undertakes no responsibility for the quality of the goods except as otherwise provided in this contract." The section as amended also provides that a disclaimer of the implied warranty of fitness for a particular purpose in a consumer contract must be in a record, be conspicuous, and use understandable language that states "[T]he seller assumes no responsibility that the goods will be fit for any particular purpose for which you may be buying these goods, except as otherwise provided in this contract." The official commentary was also substantially revised or replaced. Also, UCC § 2-316(3), which deals with the exclusion or modification of warranties, was amended to provide that an "as is" or "with all faults" disclaimer in a consumer contract must be conspicuously set forth in a record if the consumer contract is evidenced by a record. The official commentary was also substantially revised or replaced.

Cases:

Document labeled "agreement reached in settlement" was a settlement and not a "sale of goods" to which Uniform Commercial Code (UCC) and its implied warranties applied; agreement involved sale of very same goods in previous alleged sales contract and the ensuing litigation between parties in which customer alleged defects in goods, that litigation involved more than a mere obligation vel non to purchase goods, the suit being settled included issue of whether goods were merchantable and fit for particular purpose, settlement allowed purchaser to determine quality of over half of contract amount of goods, and thus, application of warranties to settlement would frustrate purpose of that agreement. Ole Mexican Foods, Inc. v. Hanson Staple Co., 285 Ga. 288, 676 S.E.2d 169, 68 U.C.C. Rep. Serv. 2d 607 (2009).

§ 771.Sale “as is” or in similar terms; as excluding..., 67A Am. Jur. 2d Sales...**[END OF SUPPLEMENT]**

Footnotes

- ¹ Uniform Commercial Code § 2-316(2).
- ² Uniform Commercial Code § 2-316(3)(a).
Where contract for sale of airplane specifically recited that purchase was “subject to the terms and conditions of an ‘as is’ sale,” buyer had no cause of action for breach of warranty when defective engine caused airplane to crash. Mid Continent Aircraft Corp. v. Curry County Spraying Service, Inc., 572 S.W.2d 308, 24 U.C.C. Rep. Serv. 574 (Tex. 1978).
- ³ Comment 7 to Uniform Commercial Code § 2-316.
- ⁴ Overland Bond & Inv. Corp. v. Howard, 9 Ill. App. 3d 348, 292 N.E.2d 168, 11 U.C.C. Rep. Serv. 945 (1st Dist. 1972); Sylvia Coal Co. v. Mercury Coal & Coke Co., 151 W. Va. 818, 156 S.E.2d 1, 4 U.C.C. Rep. Serv. 650 (1967).
- ⁵ Hull-Dobbs, Inc. v. Mallicoat, 57 Tenn. App. 100, 415 S.W.2d 344, 3 U.C.C. Rep. Serv. 1032 (1966).
- ⁶ § 728.
- ⁷ McLain v. Cuccia, 259 So. 2d 337 (La. Ct. App. 4th Cir. 1972) (holding that an “as is” automobile sold as an automobile, not as scrap or as a car body with no engine, must run); Knight v. Davenport, 71 So. 2d 388 (La. Ct. App. 1st Cir. 1954) (holding that an “as is” milch cow must be fit for purpose intended).
- ⁸ Harper v. Calvert, 687 S.W.2d 227, 39 U.C.C. Rep. Serv. 1655 (Mo. Ct. App. W.D. 1984).
- ⁹ Prudential Ins. Co. of America v. Jefferson Associates, Ltd., 896 S.W.2d 156 (Tex. 1995), reh’g of cause overruled, (May 11, 1995).

End of Document

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Tax Bill Inquiry by Name or Account Number

Acct Number: 38996 RAMEY, TERRY E ET UX RAMEY, ROBIN M

Acct Type R RESIDENTIAL
Address 706 HAZELWOOD AVE
WAYNESVILLE NC 28786

***** Account Principal: \$2,309.84 *****
***** Net Due: \$2,309.84 *****

Ln	Bill Number:	Principal:	Net Due:	Property Description:	Cond:
1	13A8605731634	\$1,364.08	\$1,364.08	706 HAZELWOOD AVE	
2	13A8637053231	\$2.84	\$2.84	#9 CREST HAVEN	} Robin Ramsey?
3	13A8637052242	\$893.22	\$893.22	#8 CREST HAVEN	
4	12A8605731634	\$0.00	\$0.00	706 HAZELWOOD AVE	MP
5	12A8637053231	\$0.00	\$0.00	#9 CREST HAVEN	
6	+12A8637052242	\$0.00	\$0.00	#8 CREST HAVEN	

Enter inquiry(Ln#), date(D), more(+), next<CR>, help(H), exit list(X), or stop(XX)

SEP 17 2013

SGB C1300790

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

IN THE GENERAL COURT OF JUSTICE
BEFORE THE CLERK
FILE NO. 13 SP 252

IN THE MATTER OF THE DISTRIBUTION)
OF SURPLUS PROCEEDS FROM THE)
FORECLOSURE OF A DEED OF TRUST)
executed by TERRY E. RAMEY (single) and)
ROBIN MORGAN RAMEY (single), dated)
April 13, 2009, and recorded on April 20, 2009,)
in Book 758 at Page 614, of the Haywood)
County Public Registry.)

AMENDED ANSWER AND DEFENSES OF
MARLIN LEASING CORP.

SEP 16 11:23
CLERK OF SUPERIOR COURT

NOW COMES Respondent Marlin Leasing Corp. (hereinafter "Marlin Leasing"), by counsel, and files this Amended Answer and Defenses in response to the Petition for Surplus Proceeds of Foreclosure Sale filed by Terry E. Ramey on or about August 8, 2013. Marlin Leasing states and answers as follows:

ANSWER OF MARLIN LEASING CORP.

1. Marlin Leasing is without specific information or knowledge with which to form a belief as to the truthfulness of the allegations contained in Paragraph 1 of the Petition and the same are therefore denied.
2. The allegations in Paragraph 2 of the Petition are admitted
3. The allegations in Paragraph 3 of the Petition are admitted
4. The allegations in Paragraph 2 of the Petition are denied.

FIRST AFFIRMATIVE DEFENSE

(Priority)

Marlin Leasing is entitled to a portion of the surplus funds because it has priority as to said funds by virtue of its judgment lien against Terry Ramey and Ramey Wrecker Service that was docketed in Haywood County, North Carolina on or about February 1, 2005 - Docket No. 05 CVS 104 ("Marlin Leasing's Judgment"). As of July 17, 2013 the payoff on Marlin Leasing's Judgment is \$35,183.96. The per diem interest rate is \$4.45.

Marlin Leasing's Judgment attached to the real property that is the subject of the foreclose action filed in Haywood County bearing docket no. 12 SP 441 ("the Foreclosure Action"). Said real property was deeded to Terry E. Ramey and wife, Robin Morgan Ramey on October 3, 1995 by a North Carolina General Warranty Deed that was recorded on October 3, 1995 in the Register of Deeds Office for

SEP 17 2013

Haywood County in Book 449, Page 1123. Terry Ramey and Robin Morgan Ramey were divorced by virtue of a Divorce Judgment filed on July 25, 2005 in the State of North Carolina, County of Haywood, File No. 05 CVD 599. Thereafter, said property was owned by Terry Ramey in fee simple and Marlin Leasing's Judgment attached to said property.

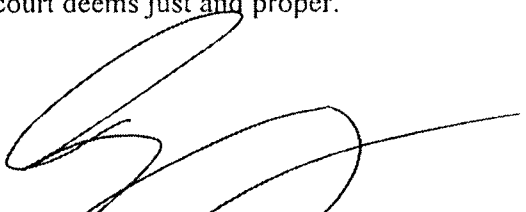
Marlin Leasing is also aware of an additional lien that has priority to Respondent Terry E. Ramey's claim to the surplus proceeds. On or about July 26, 2013, the Town of Waynesville filed its Notice of Attachment and Garnishment showing an outstanding balance of \$13,057.75 and a cost of service in the amount of \$60.00. Said Notice of Attachment and Garnishment was served upon the Haywood County Clerk of Superior Court on or about July 26, 2013.

Marlin Leasing hereby moves the Court to disburse the surplus funds to Marlin Leasing's Judgment, to the Attachment and Garnishment issued by the Town of Waynesville, and then the remainder of the funds to Terry Ramey.

WHEREFORE, having responded to the Petition, Respondent Marlin Leasing respectfully prays that it have the following relief:

1. That the relief sought in the Petition be denied.
2. That the surplus funds be applied to the judgment of Marlin Leasing to pay said judgment in full;
3. That Marlin Leasing be awarded its attorney's fees of \$2,500.00 pursuant to N.C.G.S. §45-21.32(d);
4. That the surplus funds be applied to the Attachment and Garnishment of the Town of Waynesville;
5. That the remainder of the surplus of funds, after payment has been made to Marlin Leasing and the Town of Waynesville, be paid to Terry Ramey;
6. That such other relief be granted as the court deems just and proper.

This the 13 day of September, 2013.



Byron L. Saintsing
SMITH DEBNAM NARRON DRAKE
SAINTSING & MYERS, L.L.P.
Post Office Box 26268
Raleigh, North Carolina 27611
Telephone: (919) 250-2000
Attorney for Marlin Leasing Corp.

ATTACHMENT 13

RECEIVED & FILED
Office of the Superior Court
by Deputy Clerk of the Superior Court
8-17-04
Burlington County, NJ
PAID
SEP - 8 2004

SAMUEL B. FINEMAN, ESQUIRE
MARLIN LEASING CORPORATION
124 Gaither Drive, Suite 170
Mount Laurel, New Jersey 08054
856/359-9111 ext. 4318
Collections Counsel for Plaintiff
Marlin Lease Number: 001-0170675-001

Contract

SUPERIOR COURT OF NEW JERSEY
RECORDED AS A LIEN
SEP 8 2004

SEP - 8 2004

DEPUTY CLERK
SUPERIOR COURT
BURLINGTON COUNTY

2004 AUG 24 P 3:

MARLIN LEASING CORPORATION

Plaintiff,

vs.

TERRY E. RAMEY d/b/a RAMEY
WRECKER SERVICE

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
BURLINGTON COUNTY
FILED & RECEIVED

DOCKET NUMBER: BUR-L-001334-04
CIVIL ACTION

J 238083-04
DEFAULT JUDGMENT

THIS MATTER, being opened to the Court upon the affidavit of Plaintiff, by and through its counsel, Samuel Fineman, and the Defendant, Terry E. Ramey d/b/a Ramey Wrecker Service, having failed to file an Answer or otherwise respond to the Summons and Complaint, and for good cause shown;

IT IS on this 24 day of August, 2004 that default judgment is hereby entered in favor of Plaintiff Marlin Leasing Corporation and against Defendant, Terry E. Ramey d/b/a Ramey Wrecker Service, in the amount of \$20,313.51 plus taxed costs of suit.

Annex T. P. P.
CLERK

By *[Signature]*
DEPUTY CLERK SUPERIOR COURT
BURLINGTON COUNTY

"If this is a money judgement or order, it will not be automatically recorded as a statewide lien. To do so, forward it directly to the Clerk of the Superior Court in Trenton along with a \$35.00 fee."

SUPERIOR COURT OF NEW JERSEY

I, Donald F. Phelan, Clerk of the Superior Court of New Jersey,

The same being a Court of Record, do hereby certify

That the foregoing is a true copy of **DEFAULT JUDGMENT**

filed and recorded as a lien September 8, 2004, in the cause

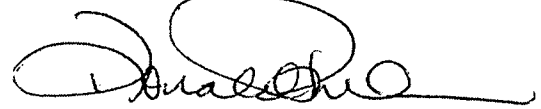
wherein **MARLIN LEASING CORPORATION** is the

Plaintiff; and **TERRY E. RAMEY dba RAMEY WRECKER**

SERVICE is the Debtor, now on file in my office.

IN TESTIMONY WHEREOF, I have hereto set my hand and affixed the seal of

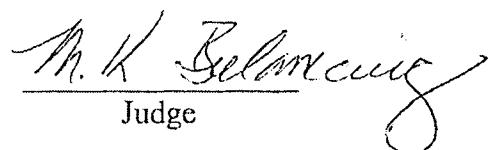
Said Court, at Trenton, this 7th Day of October two thousand and four.


Clerk

I, **MARYANN K. BIELAMOWICZ**, Judge of the Superior Court of New Jersey, do hereby certify That Donald F. Phelan, whose name is subscribed to the above certificate, was, at that date thereof, and now is, the Clerk of the Superior Court of New Jersey, that the foregoing attestation is in proper form, that the seal thereto annexed is the seal of said court, and that the signature of the said Donald F. Phelan, is in his own proper handwriting.

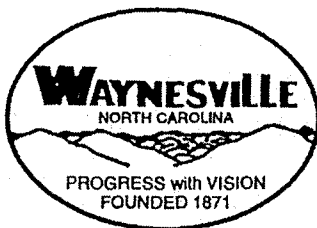
WITNESS my hand at the City of Trenton, this 7th Day of Oct

Two thousand and four.


Judge

NOTE--This certificate is made pursuant to an act of Congress
(Title 28 U.S. Code, Sec. 1738 effective September 1, 1948)

TOWN OF WAYNESVILLE ATTACHMENT 14
NORTH CAROLINA



NOTICE OF ATTACHMENT
AND GARNISHMENT

AUG 14 2013

Town of Waynesville Tax Collector
280 Georgia Avenue
Waynesville, North Carolina 28786
(828) 452-3588 • Fax (828) 452-1492

TO: Haywood County Clerk of Superior Court
215 N. Main St
Waynesville, NC 28786

THE PERSON OWNING OR HAVING IN HIS POSSESSION WAGES, RENTS, BANK DEPOSITS, DEBTS OR OTHER PROPERTY OF THE TAXPAYER SOUGHT TO BE ATTACHED (HEREINAFTER CALLED THE GARNISHEE); AND

TO: Terry Kelley
706 Hazelwood Ave.
Waynesville, NC 28786

, TAXPAYER

EACH OF YOU WILL TAKE NOTICE THAT PURSUANT TO SECTIONS 105-366 AND 105-368 OF THE NORTH CAROLINA GENERAL STATUTES AUTHORIZING THE ATTACHMENT AND GARNISHMENT OF WAGES, RENTS, BANK DEPOSITS, PROCEEDS OF PROPERTY SUBJECT TO LEVY, AND OTHER INTANGIBLE PERSONAL PROPERTY, THE PROPERTY DESCRIBED BELOW FOR THE TAXPAYER IS HEREBY ATTACHED TO THE EXTENT STATED BELOW FOR TAXES LEVIED BY THE TOWN OF WAYNESVILLE WHICH ARE UNPAID.

Bill Number

TOTAL DELINQUENT TAXES
AND INTEREST DUE

Cost of Service

see attached

\$ 60.00

1013 JUL 26 PM 2:48
WAYNESVILLE, N.C. 28786
WAYNESVILLE, N.C. 28786

In accordance with North Carolina General Statute 105-368, you may deduct \$5.00 from the Cost of Service, if paid in full prior to the date the Garnishment is to be sent to your employer.

TOTAL DUE AND ATTACHED: \$ 13,057.75

THE PROPERTY SOUGHT TO BE ATTACHED IS DUE HIM DURING CALENDAR YEAR

All proceeds

DUE THE TAXPAYER, OR SUBJECT TO HIS DEMAND, OR TO BECOME

WITHIN TEN (10) DAYS AFTER SERVICE OF THIS NOTICE, THE GARNISHEE IS DIRECTED TO ANSWER THE NOTICE BY SENDING TO THE TAX COLLECTOR OF THE TOWN OF WAYNESVILLE BY REGISTERED OR CERTIFIED MAIL, A STATEMENT THAT HE HAS NO DEFENSE OR SET-OFF AGAINST THE TAXPAYER, AND BY REMITTING THE AMOUNT DEMANDED; OR, IF THE GARNISHEE DOES OFFER A DEFENSE OR SET-OFF, HE SHALL PROCEED AS PROVIDED IN SECTION 105-368 (D) OF THE NORTH CAROLINA GENERAL STATUTES. IF THE AMOUNT DUE THE TAXPAYER HAS NOT MATURED AT THE DATE OF SERVICE OF THIS NOTICE, THE GARNISHEE'S STATEMENT SHALL SET FORTH THAT FACT, AND THE DEMAND SHALL BE PAID TO THE TAX COLLECTOR UPON MATURITY. IF THE PROPERTY ATTACHED IS WAGES OR OTHER COMPENSATION FOR PERSONAL SERVICES, THE GARNISHEE SHALL REMIT TO THE TAX COLLECTOR NOT MORE THAN TEN PERCENT OF SUCH COMPENSATION PER PAY PERIOD, AND HE SHALL CONTINUE TO REMIT NOT MORE THAN TEN PERCENT OF THE TAXPAYER'S COMPENSATION EACH PAY PERIOD UNTIL THE TOTAL AMOUNT DEMANDED IS SATISFIED, PURSUANT TO THE REQUIREMENTS OF G.S. 105-368 (B) (5), COPIES OF G.S. 105-366 AND 105-368 APPEAR ON THE REVERSE SIDE OF THIS NOTICE.

JAMES C. ROBERTSON
TOWN OF WAYNESVILLE TAX COLLECTOR

7/26/2013

DATE

RETURN

I HEREBY CERTIFY THAT THIS NOTICE WAS RECEIVED ON THE 26th DAY OF July, 2013 AND WAS SERVED AS FOLLOWS:

ON Haywood County Clerk of Superior Court (GARNISHEE) BY LEAVING A COPY WITH

June L. Ray ON THE 26th DAY OF July, 2013

7/26/2013
(DATE)

Tax Collector
(TITLE OF OFFICER SERVING NOTICE)

ON _____ (TAXPAYER) BY LEAVING A COPY WITH

Certified Mail

ON THE _____ DAY OF _____

(DATE)

(TITLE OF OFFICER SERVING NOTICE)

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
July 10, 2013

June Ray
Clerk of Superior Court
June.L.Ray@nccourts.org

Subject: Request for Public Information.

Please find enclosed (following this letter of request for public information) a page on FORECLOSURE, supplied by Legal Aid of North Carolina, Inc.

Under the topic of Sale Procedure, items c. and d. state -

- c. Person who holds a sale of real property must file a final report within thirty (30) days after receipt of the proceeds of the sale.
- d. Clerk audits the account.

You are the "Clerk" described in item d.

I would like to inspect your audits for the following case files:

12 M 167
12 M 208

In addition, I would like to inspect your audit of the recent foreclosure action for Terry Ramey's property, now forty (40) days since expiration of the last upset bid of 5/31/2013.

12 SP 441

I am requesting this public information from you, as you are the custodian of these public records.

Thank you,

Monroe A. Miller Jr.

cc: Terry Ramey

ATTACHMENT 15

JUL 8 2013

Hous. 13-1: Foreclosure

FORECLOSURE

Notice of Foreclosure Hearing

Served ten (10) days before the hearing by:

- a. delivering copy to party
- b. leaving notice at party's dwelling with person of suitable age
- c. mailing a copy registered or certified mail, return receipt requested

Served twenty (20) days before hearing by:

- a. posting notice on property in a conspicuous place

Notice of Sale

Posted in county in which property located at least twenty (20) days immediately preceding sale.

Sale Procedure

Seller invites offers. Generally the creditor is the only bidder. If there are no more upset bids. (Upset bid is a bid for a higher price than the prior upset bid),

- a. Within five (5) days following the sale to the highest bidder, the person exercising power of sale must file a preliminary report.
- b. Rights of the parties to sale become fixed if no upset deposit is filed with the clerk by the close of normal business hours on the tenth (10th) day after filing preliminary report of sale.
- c. Person who holds a sale of real property must file a final report within thirty (30) days after receipt of the proceeds of sale.
- d. Clerk audits the account.
- e. The purchaser does not record the deed nor release the purchase funds until the clerk has audited the account and filed it.
- f. Purchaser not entitled to possession until the purchase price is paid and the deed has been delivered.
- g. The debtor may remain in possession pending the closing.
- h. Purchaser must give ten (10) days notice to move out to party who remains in possession.

If there are upset bids

- a. There is no resale after an upset bid; rather each upset bid is followed by a period of ten (10) days for a further upset bid.
- b. The upset bid must be deposited with the clerk within ten (10) days after the report of sale.

Effect of Bankruptcy on Foreclosure

Automatic stay if bankruptcy petition is filed even after the sale, but before the foreclosure is complete. The foreclosure is complete when ten (10) days have passed without an upset bid being filed.

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
July 16, 2013

June Ray
Clerk of Superior Court
June.L.Ray@nccourts.org

Subject: Dismissal of 12 SP 441?

According to the Sales Procedure supplied by Legal Aid of North Carolina, Inc., (enclosed on the second page) Item (a) states that "Within five (5) days following the sale to the highest bidder, the person exercising power of sale must file a preliminary report". That would be the Trustee, Clarence Dickson.

I searched that file the other day (12 SP 441) as you passed by me in the little hallway while I was sitting at the desk, and I'll be doggoned if I could find hide nor hair of that preliminary report, notwithstanding the audit you should have signed off on within thirty (30) days.

There are some other curious anomalies with this foreclosure (I have a whole page full of bulleted items), including what appears to be two (2) separate instances of alleged bid rigging.

It appears to me that this thing should be simply dismissed, don't you? What is the best way to go about this?

- You are a judge. Can you pencil whip a dismissal and make this thing go away?
- Should I contact a Superior Court Judge here in Haywood County?
- Should I stay away from any Superior Court Judges in Haywood County and opt for a Judge Pro Tem?

Don't forget to consider Mark Pinkston's (Van Winkle) Voluntary Dismissal Without Prejudice of Haywood County cutting this thing loose (12 CV 1396). If dismissed, the county has no recourse to go after these taxes again. It would be up to Sam Hyde to hold another Foreclosure Hearing initiated by Rusty McLean. Do you think either one of them will try that again?

Let me know your thoughts.

Thank you,

Monroe A. Miller Jr.

cc: Terry Ramey

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
August 14, 2013

June Ray
Clerk of Superior Court
June.L.Ray@nccourts.org

Subject: Request for Public Information.

This is a request for Public Information, and this request is being directed to you, the custodian of the records I am requesting.

- I would like to inspect your audits for the following case files:
12 M 167
12 M 208

In an e-mail to you dated 7/15/2013, I asked:

“Ms. Ray, Let's be blunt. Did you complete the audits or not?”, and I never did receive a response from you.

- I would like to inspect an accounting thus far of the distribution of proceeds from the recent foreclosure in case 12SP441, that would be the foreclosure on Terry Ramey's property. I now know that there are spreadsheets of all expenses, including the Affidavit of Publication. I expect it to include any distribution of monies that you sent or are going to send to any of the plaintiff's in the original Sheriff's Deed foreclosure, case 12CV1396, you know, like the Town of Waynesville, and any and all other expenses.
- As required by North Carolina General Statutes,
§ 1-339.31. Public sale; report of commissioner or trustee in deed of trust.,
(b) The clerk shall audit and record the reports and accounts required to be filed pursuant to this section. (1949, c. 719, s. 1.)
you are required to perform an audit on 12SP441.

The Sales Procedure provided by Legal Aid of North Carolina, Inc., Under the topic of Sale Procedure, items c. and d. state - [re: attached],

- c. Person who holds a sale of real property **must file a final report within thirty (30) days after receipt of the proceeds of the sale.**
- d. **Clerk audits the account.**

I would like a copy of the audit on case 12SP441 when you complete it.

I am waiting with great anticipation how you are going to pencil whip this audit.

Thank you,

Monroe A. Miller Jr.

cc: Terry Ramey

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
September 10, 2013

Byron Hickox
Code Enforcement Official
Town of Waynesville, NC

Subject: “Apparent Zoning Violations”, PIN 8604-83-7269.

Thank you for e-mailing me a copy of the letter to Michael and Judy Lanning (June Ray’s sister, Clerk of Superior Court, now with an open case against Ramey) Johnson regarding Terry Ramey’s equipment on this parcel. [re: your letter next page]. As Terry Ramey and I discussed with you in your office this morning, the pages and pages of “evidence” that you took when you entered the Johnson property do not all belong to Terry Ramey. Rather, the equipment you portray as a problem is a combination of David Trantham and Terry Ramey. Most of the stuff that appears as “junk laying on the ground” does not belong to Ramey at all. So I will take the time to include each picture you took and caption it with what is and what is not Ramey’s equipment.

You know, when you get these “Anonymous” complaints over the phone, you would do well to actually get a name. For all we know, it could have been June Ray calling this complaint in - you said it was a woman.

My concern here is similar to what had happened previously with you and Mr. Wadham, when you singled him out for an outside sign, with all the other outside signs around Waynesville, i.e. potential Selective Enforcement. I hope you will help me understand why this is not a case of selective enforcement here when similar movement of trailers and equipment appears to be happening all around the city on a continuous basis, even on June Ray’s sisters lot by Mr. Trantham.

Terry Ramey indicated to you that he would be moving the equipment from 8604-83-7269. I was glad to hear you say that once you saw progress, you were prepared to offer some latitude with the 14 day schedule you demanded in your letter. You indicated that you had not received the returned green certified mail coupon as of yet, and the 14 day period would commence once you received that certified mail coupon. Please let me know when you receive that coupon and when the 14 day period commences.

Thank you,

Monroe A. Miller Jr.

p.s. Please remind Jason Rogers to gather all of the documentation regarding inspections Rogers has done since Hayes Singleton took possession of Ramey’s foreclosure property at 706 Hazelwood Avenue, Waynesville, NC 28786. I would like to make a Request for Public Information to see that file.

August 30, 2013

Michael Burke Johnson
Judy Lanning Johnson
P.O. Box 575
Crowheart, WY 82512

Mr. and Mrs. Johnson,

I am writing this letter to inform you of an apparent zoning violation that has come to the attention of the Town of Waynesville's Development Services Department. Numerous vehicles, trailers, and various large pieces of equipment are being stored on your 7.92-acre property on Lickstone Road (PIN 8604-83-7269).

Given the condition of several of the items being stored on the property, this use would be classified as a salvage yard. Salvage yards are not permitted within the Town of Waynesville's jurisdiction.

Please remove the above-mentioned vehicles and equipment within 14 days of receipt of this letter. Failure to comply shall result in the assessment of a civil penalty in the amount of \$200.00 per day for each day the violation continues.

Thank you in advance for your cooperation regarding this matter. If you have any additional questions or comments, please do not hesitate to contact me at 828-452-0401.

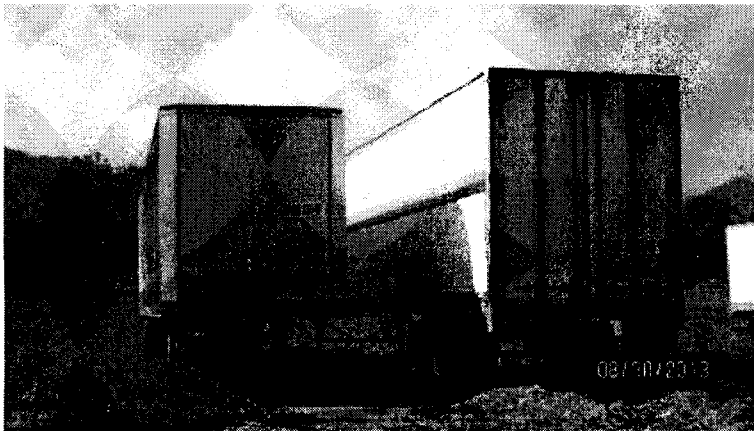
Sincerely,

Byron Hickox
Code Enforcement Official
Town of Waynesville, NC

ATTACHMENT 10



These old tires belong to David Trantham. There are weeds growing around them. They were not placed there by Terry Ramey.



These are Ramey's trailers.



These trailers belong to Trantham. The only item of Ramey's is the bulldozer.

ATTACHMENT 10



This is Ramey's equipment.



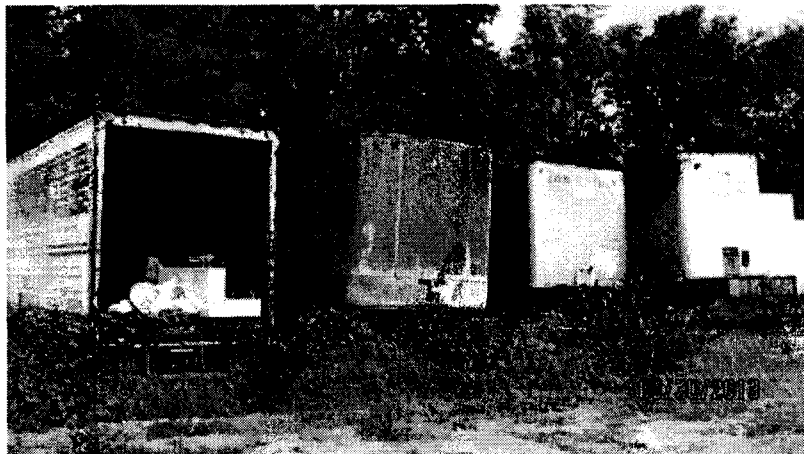
This is Ramey's equipment.



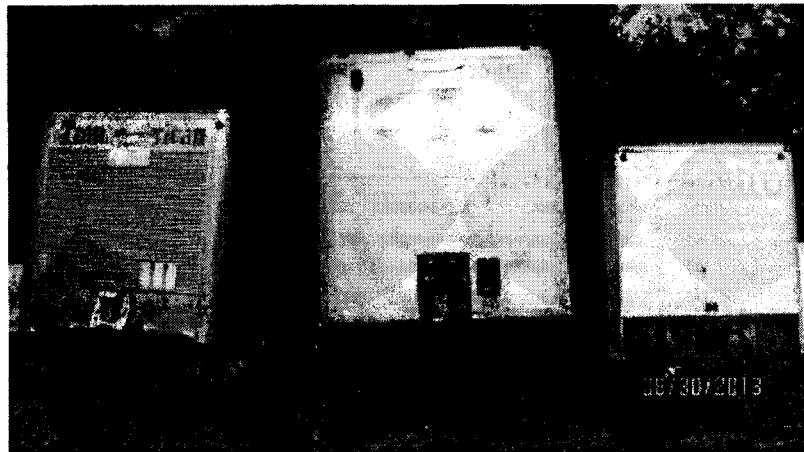
This is Ramey's equipment.



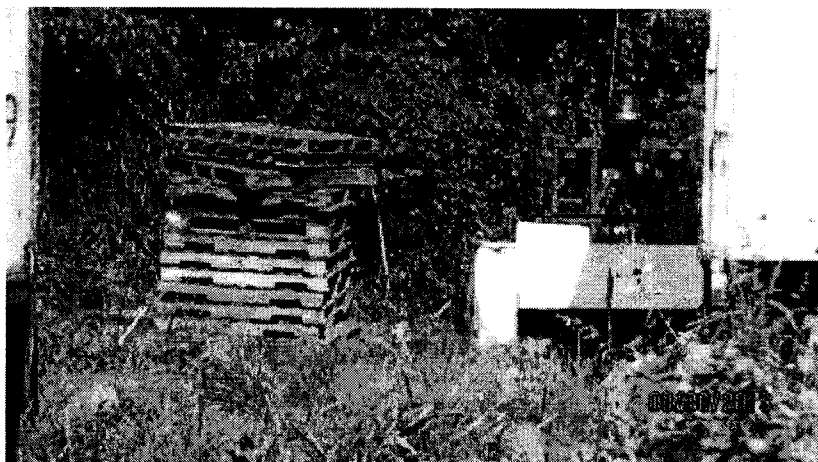
This is Ramey's equipment.



The open trailer belongs to Trantham. Others are Ramey's



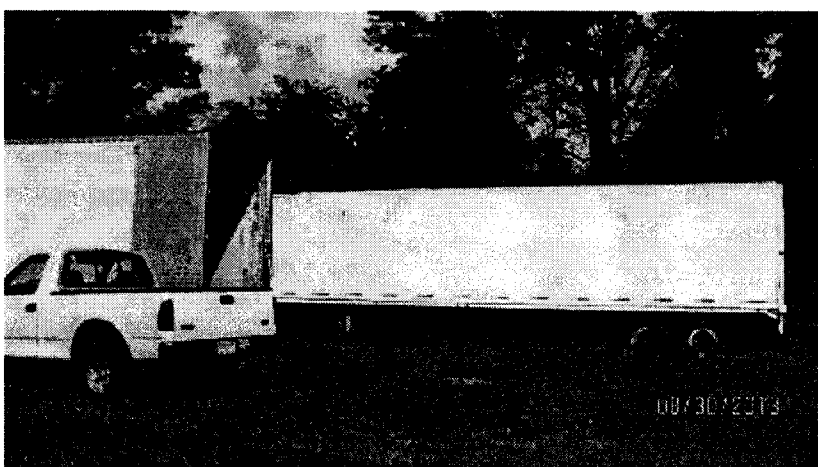
This is Ramey's equipment.



The stacked pallets belong to Trantham. Other equipment is Ramey's



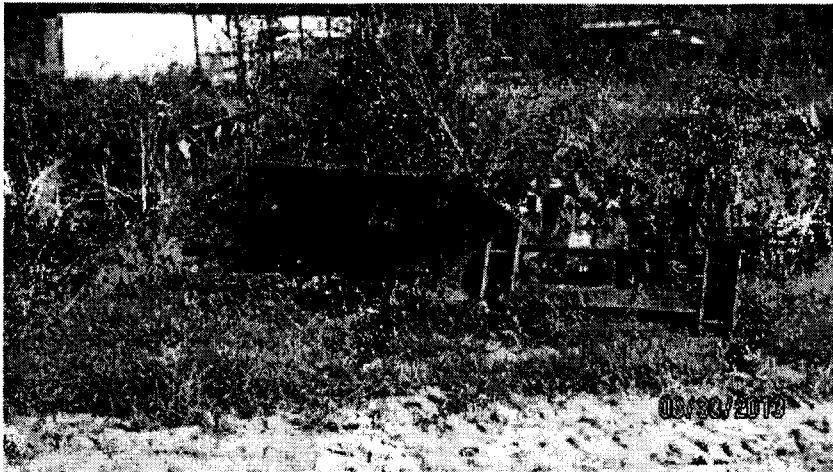
The smaller trailer in the center is Trantham's. Other equipment is Ramey's.



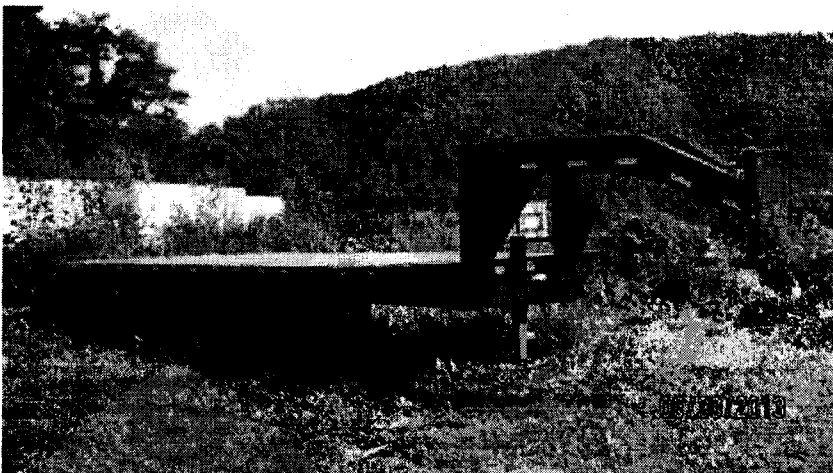
None of this belongs to Ramey.



None of this belongs to Ramey.



None of this belongs to Ramey.



None of this belongs to Ramey.

ATTACHMENT 10



None of this belongs to Ramey.

End of Photos.

Monroe A. Miller Jr.
19 Big Spruce Lane
Waynesville, NC 28786
October 3, 2013

June Ray
Clerk of Superior Court
Haywood County
Waynesville, NC 28786
June.L.Ray@nccourts.org

Subject: Request for Hearing and Public Information.

This is a continuation and compilation of Requests for Public Information for which you have never responded. There are several **immediate** requests, which I trust you will briefly consider before throwing them in the trash, and additional questions and comments. Questions will be denoted with a little “bullet” character. I am including several attachments, most recent correspondence with you (one way), and an application I have in to you to record your next hearing with Terry Ramey’s Surplus Funds account. All of this will be copied to the AOC (that’s Administrator of Courts, Barbara Moore, Executive Officer for Conference of Clerks).

First, your upcoming hearing with the disposition of Terry Ramey’s Surplus Funds now scheduled for Friday (tomorrow), October 4 at 11:00am. I noticed you had never bothered to inform me of that upcoming hearing, as I requested in my last letter to you. I had to go to the Justice Center yesterday and look up case file 13SP252, which Sara found for me, presumably on your desk. It contained a simple notice of the hearing, but you did not mention who your letter (signed by you) was sent to.

- Did you know Terry Ramey never received a copy of this letter? (This is one of many questions, denoted with the little “bullet” character).

While I made my way back to the file area, public area as you once so said, a very courteous Deputy Tyson followed me back there like a little puppy dog. As he was sticking to me like glue, I asked him if he was tailing me. He said “yes”. We are going to get back to this...

While examining the file, 13SP252, I noticed that someone had a little yellow sticky wrapped around a couple of pages, two of the same copy of the Notice of Hearing you presumably sent to God-Knows-Who, and my original and copy (file stamped) of my APPLICATION TO UTILIZE STILL PHOTOGRAPHY OR ELECTRONIC EQUIPMENT WITHIN THE COURTHOUSE FOR RECORDING OR PRESENTATION PURPOSES. I had dated it September 17, 2013, and I have attached this to the end of this letter.

I had instructed Sara to put the application on your desk and for you to get back to me to let me know if you would approve this application, and if not, I wanted the reason in writing. Do you know what? I haven’t heard a thing back from you. So here are a couple of related questions:

- Are you going to approve my application to record your hearing?
- If not, why not (in writing please)?
- Is Terry Ramey allowed to record his own hearing?
- How high do I have to go above you to get your (anticipated) refusal to record the hearing reversed?

Speaking of conflicts of interest, I'm wondering if Byron Hickox, Code Enforcement Official, Town of Waynesville, ever laid any \$200 per day fines on your sister, for the complaint against Terry Ramey temporarily parking his trucks and trailers on your sisters property after he was foreclosed on by Sam Hyde? You know, this whole thing sounds pretty incestuous to me. Imagine the coincidence of Ramey getting foreclosed on, the hassle of you approving that Jeff Norris and Hayes Singleton gave Terry Ramey zero (0) days to move his equipment off his property, then Byron Hickox getting a verbal complaint from some woman, who he could not remember who it was, and then finding out that the deal Ramey had worked out with David Trantham to store trailers on property that was already loaded with trailers, and owned by Judy Lanning Johnson of Crowheart, WY, your sister, and you, owning the very adjacent property as part of that farmland, listed as Earl Lanning and June Lanning Ray! And here you are, acting as Probate Judge in the disposition of the Surplus Funds of Ramey's foreclosure assets.

You know what I think?

I think that any self respecting Clerk of Superior Court would have recused herself immediately from this hearing simply due to the appearance of impropriety. Here is another set of questions?

- Why haven't you recused yourself already?
- Why are you holding the Surplus Funds hearing, and not Sam Hyde? Wasn't Sam Hyde the guy that administered the kangaroo Trustees Deed foreclosure hearing in the first place?
- Why hasn't the venue been changed on this hearing? Why haven't you requested that it be held in another county with a different Clerk of Superior Court?

I'll get back to Byron Hickox and Jason Rogers (who are now lit up like Christmas trees) at a later time. Maps On Line images of both your property and your sisters property are attached to this e-mail.

As you must be aware, I have taken a keen interest in David Francis and his foreclosure shenanigans, Mark Pinkston of Van Winkle, and everything eventually being approved by you, June Ray, Clerk of Superior Court. I have tracked Terry Ramey's foreclosure to the extent that I currently have an eight (8) page detailed time line, entitled, "List of problems with Ramey Foreclosure, or, "[redacted]".

Here are a list of (rhetorical) questions:

- Did you know that the Judicial Review Commission is not the entity to present a complaint regarding a Clerk of Superior Court?
- Did you know that the North Carolina Ethics Commission is an entity that can accept complaints regarding a Clerk of Superior Court?
- If the North Carolina Ethics Commission after review and investigation finds probable cause of an ethics related problem, did you what they will do about it? Nothing. All they will do is remand their findings over to the Chief District Court Judge, that would be Richlyn D. Holt.

That's kind of where I am right now.

Back to my being tailed at the Justice Center.

When I first met Deputy Mike Price on September 11, 2013 behind the glass windows at the Justice Center with Terry Ramey on yet another mission to go back to the case file area and look up some files, I spotted Jeff Jones, ADA, and made an on-the-spot appointment to follow him up to his office to discuss why David Francis was putting MP (presumably "Mark Pinkston") attorney fees on Terry Ramey's foreclosure private property tax bills, and I'm sure that we discussed you also, guess who followed us up there? Deputy Price. He stayed behind the little glass window talking to the DA secretary the entire time that Terry and I were talking with Jeff Jones, later joined by Rachael Groffsky. As we concluded and left, guess who joined us down the elevator? That's right, Deputy Price. I asked him if he was following us, and he said "yes". He mentioned something about something being slammed on a desk while Terry Ramey and I were sitting in Sam Hyde's office on September 4, 2013 (conversation recorded, so the slamming noise should be present on that recording), and I got the impression that Terry was now a "person of interest" and being tailed while in the Justice Center. But then, I found that I was also determined to be a "person of interest" and have my own dedicated tail.

You know, I kind of like the extra attention and security. I know for sure now that David Francis will not be stupid enough to make a repeated assault on me as he did on August 6, 2012 outside the elevators on the first floor [re: recording on security surveillance system].

Don't you worry, I will find out and get to the bottom of who is assigning deputies to take time from their day and follow Terry Ramey and I when we go inside the Justice Center when I have a meeting with Sheriff Christopher.

I am attaching some previous requests for information, and I really wish, when you get some spare time, to respond to them.

Thanks,

Monroe Miller

cc: Barbara Moore
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See e-mail copy list.

bcc: