

NORTH CAROLINA

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

DAVIDSON COUNTY

11 CVS 00005

2012 FEB -6 P 1:41

JACQUELINE A. KANOY,
Executrix of the Estate of Bill E. Anders,)
DAVIDSON COUNTY, S.C.)

Plaintiff)

VS.)

BRENDA ELIZABETH PUFFENBARGER)
And husband, BRIAN EUGENE)
PUFFENBARGER, and BANK OF NORTH)
CAROLINA,)

Defendants)

**PARTIAL SUMMARY
JUDGMENT AS AGAINST
DEFENDANTS BRENDA ELIZABETH
PUFFENBARGER and husband,
BRIAN EUGENE PUFFENBARGER
(Rule 56)**

THIS CAUSE, coming on to be heard and being heard upon Plaintiff's and Defendant Bank of North Carolina's ("Defendant BNC") Joint Motion for Partial Summary Judgment during the November 28, 2011, term of court before the undersigned Judge of the Superior Court of Davidson County; AND after reviewing the matters contained in the court file in this cause, and after receiving evidence and argument from counsel, the Court makes the following:

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter of this case and the parties hereto.
2. All parties entitled to notice have received due and proper notice of these proceedings.
3. Based upon the undisputed facts, Plaintiff and Defendant BNC are entitled to the relief sought.
4. The Plaintiff and Defendant BNC are entitled to recover from the Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, and their successors and assigns, a parcel of real property located in Forsyth County, North Carolina having an address of 5580 Boiling Springs Rd., Tobacoville, NC 27050 (the "Forsyth Property"), said property being more particularly described in a Deed recorded on November 24, 2010 in Book 2976, at Page 2267 of the Forsyth County Registry.
6. The Plaintiff and Defendant BNC are also entitled to recover from the Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER a 2000 Chevrolet Silverado Truck, VIN Number GCEK19TX1256147 (the "Vehicle").

ENVELOPE



2012007156 00021

FORSYTH CO, NC FEE \$26.00
PRESENTED & RECORDED

02-20-2012 10:12:37 AM

C. NORMAN HOLLEMAN
REGISTER OF DEEDS
BY: RANDY L SMITH
DPTY

BK: RE 3044
PG: 3608-3612

7. The Plaintiff and Defendant BNC are entitled to a finding and adjudication that the entire fee simple interest in the Forsyth Property has been held in trust, via a constructive trust, for Plaintiff's and Defendant BNC's benefit by Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, and their successors and assigns, including but not limited to WANDA G. PUFFENBARGER.

8. The Plaintiff and Defendant BNC are entitled to a finding and adjudication that the Vehicle has been held in trust, via a constructive or resulting trust, for Plaintiff's and Defendant BNC's benefit from and after the acquisition of said Vehicle by Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, and their successors and assigns.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the Plaintiff and the Defendant BNC are entitled to have possession of the Forsyth Property and the Vehicle, such that each asset may be disposed of and liquidated; and

2. That the Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, and their successors and assigns, including WANDA G. PUFFENBARGER and any subsequent Grantee of the Forsyth Property, are hereby deemed trustees and have held the Forsyth Property and the Vehicle in trust, by way of a constructive trust, for the benefit of Plaintiff and Defendant BNC; and

3. That title to the Forsyth Property is hereby quieted, and transfer, disposal and liquidation of the Forsyth Property shall take place as follows:

- a. Plaintiff and Defendant BNC have agreed and consented to the following procedures for transfer, disposal and liquidation;
- b. As of the date of the entry of this Order, Plaintiff JACQUELINE A. KANOY, Executrix of the Estate of Bill E. Anders, is declared to be the record title owner of the entire fee simple interest of the Forsyth Property, including any fixtures contained thereon, so ordered pursuant to N.C. Gen. Stat. 1A-1, Rule 70;
- c. Plaintiff shall immediately take possession of the Forsyth Property, have such listed by a licensed real estate agent, said agent to be agreed upon by both Plaintiff and Defendant BNC; and
- d. This Order shall not affect any interest that Defendant BNC has, or may have, in the Forsyth Property. Any such interest, including an Attachment obtained by Defendant BNC in that certain Civil Action filed in the Guilford County Superior Court, said action being labeled 11 CVS 15, shall remain validly in place until released by Defendant BNC, or by an Order entered by the Guilford County Superior Court; and

- e. Upon the receipt of an Offer to Purchase the Forsyth Property agreeable to both Plaintiff and Defendant BNC, Defendant BNC shall release the aforementioned Attachment in order to facilitate said sale; however, in the event such an offer is not agreeable to both Plaintiff and Defendant BNC, Defendant BNC may refuse to release said Attachment. In such an event, the Forsyth Property shall be held in trust pending a final resolution of the matters in controversy existing between Plaintiff and Defendant BNC in this action and in the Guilford County Action; and
- f. Any proceeds received following a sale of the Forsyth Property agreeable to both Plaintiff and Defendant BNC shall be held in trust for the benefit of both Plaintiff and Defendant BNC by counsel for Plaintiff, David E. Inabinett, pending a final resolution of the matters existing between Plaintiff and Defendant BNC in this action and in the Guilford County Action, except that nominal fees required to facilitate the transfer of title of both the Forsyth House and the Vehicle may be used for that sole and express purpose, said fees not to exceed \$250, unless further agreed upon by the parties or by further order of this Court.

4. That Plaintiff and Defendant BNC have agreed and consented to the following procedures for transfer, disposal and liquidation of the Vehicle:

- a. That title to the Vehicle is hereby transferred, effective as of the date of the entry of this Order, from the Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, or any successors or assigns thereto, to Plaintiff JACQUELINE A. KANOY, Executrix of the Estate of Bill E. Anders, so ordered pursuant to N.C. Gen. Stat. 1A-1, Rule 70; and
- b. That Plaintiff shall have any Certificate of Title to the Vehicle transferred into the name of "JACQUELINE A. KANOY, Executrix of the Estate of Bill E. Anders" and immediately take possession of said Vehicle, and that this Order may be presented to any motor vehicle authority to facilitate the issuance of a new Certificate of Title; and
- c. That any proceeds received following a sale or disposition of the Vehicle shall be held in trust for the benefit of both Plaintiff and Defendant BNC by counsel for Plaintiff, David Inabinett, pending a final resolution of the matters existing between Plaintiff and Defendant BNC in this action and in the Guilford County Action; and

5. That Plaintiff and Defendant BNC have agreed that Plaintiff shall be free to immediately execute upon this Judgment for the purposes of taking possession of, and disposing of, the Forsyth Property and the Vehicle, and holding said property or proceeds in trust for the

benefit of both Plaintiff and Defendant BNC pending a final resolution of the issues remaining between Plaintiff and Defendant BNC in this action and in the Guilford County Action; and

6. That the Sheriff of Forsyth County is hereby directed to turn possession of the Forsyth Property over to Plaintiff and Defendant BNC or their duly appointed representative or agent; and

7. That the Sheriff of any County where the Vehicle is located is hereby directed to seize and turn possession of the Vehicle over to Plaintiff or Plaintiff's duly appointed representative or agent; and

8. That this Order is entered in order to allow the Plaintiff and Defendant BNC to be given possession of the aforesaid Forsyth Property and Vehicle, as specified hereinabove, to the end that the same be disposed of as outlined hereinabove; and

9. That Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER are hereby ordered to refrain from removing any fixtures, or from further damaging the Forsyth Property, such that its fair market value is reduced: the aforementioned order includes, but is not limited to, removal of any affixed appliances, plumbing or lighting fixtures. That Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER are hereby ordered to refrain from causing any intentional damage to the Vehicle. A violation of this Order shall result in the Defendants being found in Contempt of Court, the penalties of such being in the discretion of the Court following a hearing on a duly filed motion to show cause why Defendants should not be held in such contempt; and

10. That Plaintiff's remaining claims against Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER, including any claim for monetary damages, remain preserved for a later disposition in the above-captioned civil action, including but not limited to punitive damages resulting from the claim of relief for breach of fiduciary duty and/or fraud; and

11. That any claims that Defendant BNC has, or may have, against the Plaintiff or against Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER in the above-captioned civil action, or in the Guilford County civil action being labeled 11 CVS 15, remain unaffected by this Order; and

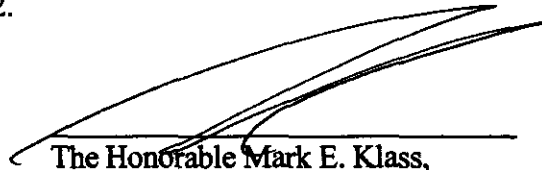
12. That this Order be immediately recorded in the public land records of Forsyth County to provide record notice to any future title searchers of the provisions of this Order;

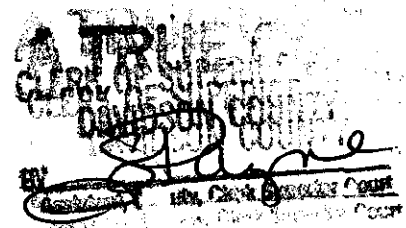
13. That the Register of Deeds of Forsyth County, North Carolina cross index this Judgment under the names of BRENDA A. PUFFENBARGER, BRIAN EUGENE PUFFENBARGER, WANDA G. PUFFENBARGER, JACQUELINE A. KANOY, Executrix of the Estate of Bill E. Anders and BANK OF NORTH CAROLINA; and

14. That the costs of this action shall be charged to the Defendants BRENDA A. PUFFENBARGER and BRIAN EUGENE PUFFENBARGER; and

15. This Order may be modified by further Order of the Court, to the extent the Court deems such modification necessary.

This the 3 day of ^{Feb} ~~January~~, 2012.


The Honorable Mark E. Klass,
Superior Court Judge Presiding


The Clerk of the Court