IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-471

Filed: 2 February 2016

Iredell County, No. 13 SP 685

IN THE MATTER OF THE FORECLOSURE OF THE DEED OF TRUST EXECUTED BY FOX DEN DEVELOPMENT, LLC, DATED MAY 19, 2004, AND RECORDED IN BOOK 1621 AT PAGE 1101, IREDELL COUNTY REGISTRY

By: FRANK C. THIGPEN, Attorney for Trustee, RYAN D. OXENDINE

Appeal by Petitioner from judgment entered 14 October 2014 by Judge Anna Mills Wagoner in Superior Court, Iredell County. Heard in the Court of Appeals 5 October 2015.

Everett Gaskins Hancock LLP, by Jason N. Tuttle and James M. Hash, for Petitioner.

Thigpen & Jenkins, LLP, by Frank C. Thigpen, for Substitute Trustee Ryan Oxendine.

Horack, Talley, Pharr, & Lowndes, P.A., by Robert B. McNeill and Amy P. Hunt, for Homeowners.

Roberson Haworth & Reese, P.L.L.C., by Christopher C. Finan and Alan B. Powell, for Wells Fargo Bank, N.A.

Jenkins Law Group, PLLC, by T. Lawson Newton and Ellis B. "Bo" Drew, III, for LR Development Charlotte and Lockridge Development Charlotte.

Eisele, Ashburn, Greene & Chapman, P.A., by John D. Greene, for Fox Den Development Company, LLC-Appellee and Fox Den Country Club, LLC-Appellee.

McGEE, Chief Judge.

The Ethel P. Goforth Primary Trust ("the Goforth Trust") appeals the order of the trial court denying its right to foreclose on certain property in Iredell County. For the following reasons, we affirm.

I. Background

Appellee Fox Den Development Company, LLC and Fox Den Country Club, LLC ("Fox Den Development" and "Fox Den Country Club" – together, "the Fox Den Companies") were formed in 1994 to develop a residential community with a golf course in Iredell County ("the Development"). Although these companies are separate legal entities, they appear to have merely focused on developing different parts of the Development, and their membership has always been identical. Throughout the mid-1990s to early-2000s, the Fox Den Companies were primarily funded by two families, Dwight and Ethel Goforth ("the Goforths") and E. Udean and Nancy Burke ("the Burkes"). As members of the Fox Den Companies, Dwight Goforth ("Mr. Goforth") and the Burkes did business informally and without fully documenting their dealings with the Fox Den Companies. In the early 2000s, the Fox Den Companies decided to build a clubhouse for the golf course and sell lots for "Phase IV" of the residential section of the Development ("the Phase IV lots"). The Goforths and the Burkes each loaned the Fox Den Companies approximately $1,000,000.00 for these purposes.

Mr. Goforth died unexpectedly in March 2004, and his heirs requested that the loans owed to the Goforths by the Fox Den Companies be recorded in written instruments. On or about 19 May 2004, Phyllis Edmiston ("Ms. Edmiston"), the treasurer of Fox Den Development, executed a promissory note on behalf of the company in favor the Estate of Mr. Goforth in the amount of $1,002,000.00 ("the 2004 Goforth Note"). Ms. Edmiston contemporaneously executed a deed of trust in order to secure the 2004 Goforth Note with real property in the Development that was owned by Fox Den Development, including at least some of the Phase IV lots ("the 2004 Goforth Deed of Trust"). The 2004 Goforth Deed of Trust was recorded with the Iredell County Register of Deeds on 9 February 2005. Ms. Edmiston also executed and recorded almost identical documents in favor of the Burkes at that time.

Throughout the mid-2000s, the Fox Den Company continued building the Development. The Goforths and the Burkes each loaned the Fox Den Companies approximately $1,500,000.00 beyond the money accounted for in the 2004 notes. However, those loans were not recorded in written instruments at the time they were made. No Phase IV lots were sold after 2008.

The health of Ethel Goforth ("Mrs. Goforth") was failing in December 2009, and she did not survive the year. Before her death, the Goforth heirs requested an accounting of the amounts owed to the Goforths by the Fox Den Companies. E. Udean Burke ("Mr. Burke") — who was designated as the "Chief Managing Member" of Fox

Den Development in a written agreement by the company's members, dated 4 April 2002 — executed new promissory notes, on or around 8 December 2009, in favor of the Goforth Trust and the Burkes, each for approximately $2,500,000.00 ("the 2009 Goforth Note" and "the 2009 Burke Note").[1] There does not appear to be any dispute that, as found by the trial court, "[t]he 2009 Goforth Note included all of the debt that was purportedly evidenced by the 2004 Goforth Note[,]" although the legal significance of this is strongly contested by the parties. Deeds of trust to secure the 2009 Goforth and Burke Notes were never executed.

The present foreclosure action was initiated on 16 August 2013 by the substitute trustee for the Goforth Trust.[2] The Goforth Trust sought to foreclose on property in the Development, including the Phase IV lots, under the power of foreclosure in the 2004 Goforth Deed of Trust and through an expedited foreclosure proceeding under N.C. Gen. Stat. § 45-21.16. Fox Den Development, some owners of the Phase IV lots, and other interested parties, challenged the action.[3]

The Iredell County Clerk of Superior Court held a hearing on or about 24 September 2013 and allowed the foreclosure to go forward in an order dated

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[1] The 2004 Goforth and Burke Notes and Deeds of Trust were signed on behalf of Fox Den Development, while the 2009 Goforth and Burke Notes were signed on behalf of Fox Den Country Club. During the hearing in the present case, Mr. Burke testified that, although the companies "had different names, legal names[,]" the distinction "didn't make any difference" operationally. The parties have not raised this discrepancy as an issue on appeal, and we will not address it.

[2] One of the Goforth children, acting as executor of the Estate of Mr. Goforth, assigned the 2004 Goforth Note and Deed of Trust to the Goforth Trust on 9 August 2011.

[3] Notably, the Burkes are not attempting to foreclose in the present case. In fact, the Burkes have opposed the Goforth Trust's foreclosure effort.

29 April 2014. That order was appealed, and the trial court heard the matter *de novo* on 9 September 2014 ("the hearing"). In an order entered 14 October 2014 ("the order"), the trial court found, *inter alia*, that Ms. Edmiston did not have authority to execute the 2004 Goforth Note and Deed of Trust and concluded that the foreclosure could not proceed because those instruments were invalid as a matter of law. The Goforth Trust appeals.

II. Standard of Review

The rules defining the limited scope of foreclosure proceedings under N.C. Gen. Stat. § 45-21.16 (2013), and the appeals that are taken therefrom, are well established.

> [T]he clerk of superior court [adjudicates the initial foreclosure hearing and] is limited to making the six findings of fact specified under subsection (d) of [N.C.G.S. § 45-21.16]: (1) the existence of a valid debt of which the party seeking to foreclose is the holder; (2) the existence of default; (3) the trustee's right to foreclose under the instrument; (4) the sufficiency of notice of hearing to the record owners of the property; (5) the sufficiency of pre-foreclosure notice under [N.C. Gen. Stat. § 45-102] and the lapse of the periods of time established by Article 11, if the debt is a home loan as defined under [N.C. Gen. Stat. § 45-101(1b)]; and (6) the sale is not barred by [N.C. Gen. Stat. § 45-21.12A]. The clerk's findings are appealable to the superior court for a hearing *de novo*; however, in a section 45-21.16 foreclosure proceeding, the superior court's authority is similarly limited to determining whether the six criteria of N.C. Gen. Stat. § 45-21.16(d) have been satisfied. The superior court has no equitable jurisdiction and cannot enjoin foreclosure upon any ground other than the ones stated in [N.C. Gen .Stat. § 45-21.16].

> On a *de novo* appeal to the Superior Court in a section 45-21.16 foreclosure proceeding, the trial court must declin[e] to address [any party's] argument for equitable relief, as such an action would [ ] exceed[ ] the superior court's permissible scope of review[.] Indeed, [t]his Court has repeatedly held that equitable defenses may not be raised in a hearing pursuant to [N.C. Gen. Stat. §] 45-21.16, but must instead be asserted in an action to enjoin the foreclosure sale under [N.C. Gen. Stat. § 45-21.34].

In re Young, 227 N.C. App. 502, 505 –06, 744 S.E.2d 476, 479 (2013) (citations and quotation marks omitted).

Moreover, "[i]t is well settled in this jurisdiction that when the trial court sits without a jury, the standard of review [for this Court] on appeal is whether there was competent evidence to support the trial court's findings of fact and whether its conclusions of law were proper in light of such facts." *Mosler v. Druid Hills Land Co.*, 199 N.C. App. 293, 298, 681 S.E.2d 456, 459 (2009). "[T]he [trial] court's findings of fact are conclusive if supported by competent evidence, even though other evidence might sustain contrary findings." *Stephens v. Dortch*, 148 N.C. App. 509, 515, 558 S.E.2d 889, 892 (2002). "[T]he trial court's conclusions of law [are] subject to *de novo* review." *Mosler*, 199 N.C. App. at 298, 681 S.E.2d at 459.

III. Ms. Edmiston's Authority

The Goforth Trust contends the trial court erred by finding that Ms. Edmiston lacked authority to execute the 2004 Goforth Note and Deed of Trust. Its argument rests largely on a contention that the matter of Ms. Edmiston's authority to execute the 2004 Goforth Note and Deed of Trust was a question of law, not fact, and therefore

is subject to *de novo* review by this Court. *See Mosler*, 199 N.C. App. at 298, 681 S.E.2d at 459. However, our Court has long held that "[t]he question of whether an agent . . . [has] express, implied, or apparent authority is a question of fact," *Daniel Boone Complex, Inc. v. Furst*, 43 N.C. App. 95, 108, 258 S.E.2d 379, 388 (1979), particularly "[i]n cases in which the evidence is conflicting, or susceptible to different reasonable inferences[.] [T]he nature and extent of an agent's authority is a question . . . of law for the court only [w]here different reasonable and logical inferences may not be drawn from the evidence[,]" *First Union Nat'l Bank v. Brown*, 166 N.C. App. 519, 527–28, 603 S.E.2d 808, 815 (2004) (quotation marks omitted).

In the present case, there was conflicting, but competent, evidence for the trial court to find that Ms. Edmiston lacked the authority to execute the 2004 Goforth Note and Deed of Trust. On one hand, Fox Den Development's operating agreement states that

> Each Member of the Company, by virtue of its status as a Member, shall also be a Manager of the Company for all purposes. . . . The Members, acting in their capacity as Managers, shall have full and complete authority, power, and discretion to manage and control the business of the Company, to make all decisions regarding those matters[,] and to perform any and all other acts customary or incident to the management of the Company's business.

The Goforth Trust contends this showed Ms. Edmiston had authority to execute the 2004 Goforth Note and Deed of Trust because, according to the Goforth Trust, simply signing those documents was "incident to the management of [Fox Den

Development's] business."

On the other hand, Respondents note that Fox Den Development's operating agreement also states that "all decisions with respect to the management of the business and affairs of the Company shall be made by action of a Majority in Interest of the Members taken at a meeting or evidenced by a written consent executed by a Majority in Interest of the Members." The members of Fox Den Development also executed a written agreement, dated 4 April 2002, which designated Mr. Burke as the "Chief Managing Member" of the company. During the hearing, Mr. Burke testified he could not recall the members of Fox Den Development meeting to approve or give Ms. Edmiston written authority to sign the specific 2004 Goforth and Burke Notes and Deeds of Trust that were executed by Ms. Edmiston. Although Mr. Burke testified that he would not have opposed the execution of the 2004 Goforth and Burke Notes and Deeds of Trust, he also testified that Ms. Edmiston was not given the authority to execute the documents on behalf of Fox Den Development. In light of Mr. Burke's testimony, and because the language in Fox Den Development's operating and member agreements allow for conflicting interpretations of its members' authority, there was competent evidence for the trial court to conclude that Ms. Edmiston did not have the authority to execute the 2004 Goforth Note and Deed of Trust. That finding is binding on appeal, even if the trial court was also presented with competent evidence to the contrary. *See Stephens*, 148 N.C. App. at 515, 558

S.E.2d at 892.

IV. Ratification

The Goforth Trust contends that, even if Ms. Edmiston did not have authority to execute the 2004 Goforth Note and Deed of Trust, Fox Den Development "ratified [those documents] as a matter of law." Conversely, Respondents contend that the Goforth Trust's argument is not properly before this Court on the ground that ratification is an equitable principle and, therefore, outside the scope of the foreclosure proceeding in the present case. *See generally Young*, 227 N.C. App. at 505, 744 S.E.2d at 479 ("The superior court has no equitable jurisdiction" in a foreclosure proceeding under N.C.G.S. § 45-21.16 (quotation marks omitted).

There appears to be a conflict in our caselaw regarding whether ratification is an equitable or legal principle for the purposes of foreclosure proceedings under N.C.G.S. § 45-21.16. Although the Goforth Trust contends that it "is not aware of any cases in which a North Carolina appellate court has directly characterized ratification as an equitable claim[,]" there are, in fact, cases from our appellate courts that characterize ratification as a principle of equity, not of law. *See, e.g., Collier v. Bryant*, 216 N.C. App. 419, 427, 719 S.E.2d 70, 78 (2011) ("Equitable defenses[ ] includ[e] accord and satisfaction, ratification, and unclean hands[.]"); *Pittman v. Barker*, 117 N.C. App. 580, 591, 452 S.E.2d 326, 332 (1995) ("[E]quitable defenses . . . [include] estoppel, laches, ratification, and waiver[.]").

The brief for the Goforth Trust relies heavily on *Espinosa v. Martin*, 135 N.C. App. 305, 309, 520 S.E.2d 108, 111 (1999), which involved a § 45-21.16 foreclosure proceeding and states that "[t]o constitute ratification as a *matter of law*, the conduct must be consistent with an intent to affirm the unauthorized act and inconsistent with any other purpose." (emphasis added). Although not specifically asked to resolve whether ratification is inherently a legal or equitable principle, the Court in *Espinosa* proceeded to determine there was "competent evidence [in the] record" to support the trial court's findings, that in turn supported the trial court's conclusion that no ratification had occurred in that case.[4] *Id.*

[4] We do note, however, that the statement in *Espinosa* regarding "ratification as a matter of law" was directly quoted from *American Travel Corp. v. Central Carolina Bank*, 57 N.C. App. 437, 443, 291 S.E.2d 892, 896 (1982), which cited to Restatement (Second) of Agency § 83 (1958), which in turn specifically referred to "ratification" as causing an "*equitable* result[.]" (emphasis added). Nonetheless, this longstanding conflict over the fundamental nature of ratification remains in our caselaw. *Compare Hill v. R. R.,* 143 N.C. 539, 559–61, 55 S.E. 854, 861–62 (1906) ("[I]t is a very clear and salutary rule in the law of agency adopted for our guidance, that when the principal, with the knowledge of all the facts, acquiesces expressly or impliedly by his silence in the voidable acts of his agent, done under an assumed authority or in disregard of prescribed methods, he cannot be heard afterwards to impeach them under the pretense that they were done without authority, or even contrary to instructions. This is tantamount either to a waiver or ratification, and is based upon the idea of laches. . . . They must make a better showing of wrongs which they have suffered, and also of reasonable and timely efforts to obtain relief against them, before a court of equity will interfere in their behalf to set aside an executed contract, and especially as it is well-nigh impossible to place the parties in *statu quo*." (citation omitted); *and Maynard v. Moore*, 76 N.C. 158, 164 (1877) (holding that the defendant's "counter claim, that he ratified" an instrument, was "purely equitable" in nature); *with Branch Banking & Trust Co. v. Gill*, 293 N.C. 164, 193, 237 S.E.2d 21, 39 (1977) ("Ratification by a principal of an unauthorized act of his agent is, of course, a doctrine of the common law, not of equity."); *and Powell v. Heptinstall*, 79 N.C. 207, 208 (1878) ("The plaintiff had his election to have the [instrument] corrected in a Court of Equity, or to ratify it and sue for the purchase price in a Court of Law.").

We need not resolve this conflict in the present case. The Goforth Trust did not present the trial court with a specific argument that Fox Den Development had ratified the 2004 Goforth Note and Deed of Trust.[5] In fact, the only person to even mention "ratification" during the hearing was counsel for one of the numerous parties opposing the present foreclosure action, who suggested during closing arguments that ratification was not applicable in the present case. Accordingly, the Goforth Trust has not preserved this issue for appeal. *See* N.C.R. App. P. 10 ("In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make[.]").

V. Novation and Substitution

Although not directly raised by the Goforth Trust, Respondents-Homeowners ("Homeowners") argue that the 2004 Goforth Note and Deed of Trust also were rendered invalid because the trial court found that "[t]he 2009 Goforth Note included all of the debt that was purportedly evidenced by the 2004 Goforth Note[.]" According to Homeowners, this finding "can reasonably be construed to indicate a payment of the 2004 debt[,]" and renders the 2004 Goforth Note and Deed of Trust inactionable. Homeowners further contend that this argument is not an "equitable argument . . .

[5] At the hearing, counsel for the Goforth Trust suggested only that "notwithstanding whatever [the] operator agreement may have said, [Ms. Edmiston] appears to have signed and bound the company without question for years and years."

for novation" of the debt evidenced by the 2004 Goforth Note and Deed of Trust, but instead is an argument that there is not a valid debt upon which the Goforth Trust is attempting to foreclose upon, pursuant to N.C.G.S § 45-21.16(d).

Even assuming that Homeowners provide a plausible "constru[al]" of the order, we need not resolve Homeowners' argument on appeal. As a preliminary matter, Homeowners' position appears to make a distinction without a difference. Homeowners contend both (1) that they are not arguing that a novation occurred and (2) that the 2009 Goforth Note "paid off" and replaced the 2004 Goforth Note and Deed of Trust, which seems to this Court to be an argument – in all ways, but in name – that a novation occurred.[6]

Regardless, there again appears to be a conflict in our caselaw, this time regarding whether novation is an equitable or legal principle for the purposes of § 45-21.16 foreclosure proceedings. Our appellate courts have recognized novation as an equitable defense. *See, e.g.*, *Scott v. Dunn*, 21 N.C. (1 Dev. & Bat. Eq.) 425, 428 (1836)

[6] Homeowners also direct this Court to findings in the order indicating that the Goforth Trust represented to the IRS in 2011, "under penalty of perjury[,]" that the debt owed by the Fox Den Companies was unsecured and valued at "the amount [owed under] the 2009 Goforth Note." They contend that these alleged representations were sufficient evidence that the 2004 Goforth Deed of Trust no longer secured the debt evidenced by the 2004 Goforth Note, particularly because the Goforth Trust allegedly derived an undue benefit from those representations by paying less tax as a result. They also contend that this does not constitute an equitable argument based on the theory of estoppel. Again, we are presented with a distinction without a difference. *See Whitacre P'ship v. Biosignia, Inc.*, 358 N.C. 1, 25, 29, 591 S.E.2d 870, 886, 889 (2004) ("[J]udicial estoppel . . . preclude[s] the assertion of inconsistent factual positions before a tribunal . . . [particularly when] the party seeking to assert an inconsistent position would derive an unfair advantage [from the inconsistency.]").

("The doctrine of substitution which prevails in equity, is not founded on contract, but, as we have seen, on the principles of natural justice.");[7] *Meehan v. Cable*, 135 N.C. App. 715, 716, 523 S.E.2d 419, 421 (1999) ("equitable defenses . . . [include] waiver, estoppel, novation, and tender of payment."). However, this Court's analysis in *Bowers v. Bowers*, 74 N.C. App. 708, 329 S.E.2d 725 (1985), suggests that arguments regarding novation or substitution are not outside the jurisdictional scope of § 45-21.16 foreclosure proceedings. In *Bowers*, the parties executed a promissory note and deed of trust. *Id.* at 709, 329 S.E.2d at 726. They later executed "a new note and deed of trust, which were substituted for the original note and deed of trust." *Id.* One of the parties eventually brought a § 45-21.16 foreclosure proceeding under the power of sale in the original deed of trust. *Id.* at 710, 329 S.E.2d at 727. Although not specifically asked to resolve whether novation or substitution are inherently legal or equitable principles, the Court in *Bowers* held that the second deed of trust was not executed properly, was "invalid[,] and [therefore] amounted to substantial failure of consideration for the second loan agreement. [That] [f]ailure of consideration render[ed] the second loan agreement a nullity, and revive[d] the parties' duties under the original loan agreement, for which the second agreement was substituted[.]" *Id.* at 711, 329 S.E.2d at 727–28 (citations omitted).

[7] "[O]ur courts have used the terms substitution and novation interchangeably, rendering them definitionally one and the same." *Zinn v. Walker*, 87 N.C. App. 325, 335, 361 S.E.2d 314, 319 (1987).

The present case is not meaningfully distinguishable from *Bowers*. As in *Bowers*, the parties entered into a secured loan agreement, evidenced by a promissory note and deed of trust. They subsequently attempted to substitute that original loan agreement by executing a new promissory note but they also failed to execute a valid deed of trust to secure the new note. Under *Bowers*, this would have "render[ed] the [substituted part of the] second loan agreement a nullity, and revive[d] the parties' duties under the original loan agreement[.]" *Id.* Therefore, even if we assume that this Court has the jurisdictional authority to consider Homeowners' argument, we would be compelled by *Bowers* to reject it, strictly as a matter of law. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 36–37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court.").

VI. Whether the Trial Court Exceeded its Jurisdiction

The Goforth Trust contends the trial court exceeded the scope of its jurisdiction in two ways. First, the Goforth Trust argues the trial court impermissibly made findings in the order that implicated equitable concerns, which would not have been relevant to the trial court's limited inquiry in a § 45-21.16 foreclosure proceeding. Second, the Goforth Trust argues the trial court exceeded its jurisdiction by determining the "ultimate validity" of the 2004 Goforth Note and Deed of Trust, by declaring them invalid as a matter of law.

A. Findings Implicating Equitable Concerns

The Goforth Trust first challenges numerous findings in the order on the ground that they implicate equitable concerns and, therefore, were outside the limited scope of the trial court's jurisdiction in the § 45-21.16 foreclosure proceeding in the present case. The Goforth Trust is correct that some of the language in the challenged findings implicates primarily equitable concerns.

In the order, part of finding of fact 19 indicates that, as Fox Den Development was selling numerous Phase IV lots, it "delivered a warranty deed that warranted that the lots were being sold free and clear of the liens of any deeds of trust," and finding of fact 21 indicates that the "[p]etitioners were aware the [Phase IV] lots were being sold" accordingly. As a purely legal matter, these findings do not address the enumerated factual matters that a trial court can consider during a § 45-21.16 foreclosure proceeding. Instead, the challenged portions of findings of fact 19 and 21 address the question of whether the Goforth Trust should be estopped from foreclosing on the Phase IV lots based on what its predecessors in interest may have known, or represented, at the time the Phase IV lots were being sold. *See generally Friedland v. Gales*, 131 N.C. App. 802, 806, 509 S.E.2d 793, 796 (1998) ("The doctrine of equitable estoppel is based on an application of the golden rule to the everyday affairs of [people]. It requires that one should do unto others as, in equity and good conscience, he [or she] would have them do unto him [or her], if their positions were reversed. . . . Its compulsion is one of fair play."); *but cf. In re Hudson*, 182 N.C. App.

499, 503–04, 642 S.E.2d 485, 488–89 (2007) (holding that allegations of *fraud* may be considered during a § 45-21.16 foreclosure proceeding). Therefore, the challenged portions of findings of fact 19 and 21 invoke equitable considerations that were not properly before the trial court.

However, other findings that are challenged by the Goforth Trust merely describe facts relevant to the history and procedural posture of the present case. For instance, finding of fact 35 indicates that Fox Den Development did not sell any Phase IV lots after 2008 and that "the Goforths and the Burkes and to a lesser extent the other members of the Fox Den Companies financed continuing operation [of the companies] either through contributions to capital or through loans" thereafter. Finding of fact 36 indicates that "[e]ventually the Goforths refused to continue to fund shortfalls in the Fox Den Companies' operating budgets." These findings do not implicate primarily equitable concerns but, instead, provide context to explain how the present case came about. Although this Court has stated that "the clerk of superior court [in a § 45-21.16 foreclosure proceeding] is limited to making the six findings of fact specified under subsection (d) of the statute," *Young*, 227 N.C. App. at 505, 744 S.E.2d at 479, it would be incongruous to interpret N.C.G.S. § 45-21.16(d) as prohibiting the trial court from making *any* findings, other than those enumerated in the statute, that might explain the history, context, or procedural posture of the case at hand.

We need not examine each of the over two-dozen findings challenged by the Goforth Trust. As discussed *supra*, the order of the trial court rests firmly on the finding that Ms. Edmiston did not have the authority to execute the 2004 Goforth Note and Deed of Trust, and this finding supports the trial court's conclusion of law that those instruments were invalid as a matter of law. *See Mosler*, 199 N.C. App. at 298, 681 S.E.2d at 459. "[T]he admission of incompetent evidence is not reversible error if there is sufficient competent evidence to support the findings" necessary to support the trial court's ultimate conclusion. *Denise v. Cornell*, 72 N.C. App. 358, 360, 324 S.E.2d 305, 307 (1985). Therefore, to the extent that the trial court made findings that addressed equitable considerations, those findings were not necessary to the trial court's ultimate decision in the present case and do not amount to reversible error. *See id.*

B. Validity of the 2004 Goforth Note and Deed of Trust

The Goforth Estate next contends the trial court exceeded its jurisdiction by "declaring the 2004 Goforth Note and Deed of Trust invalid." (capitalization modified without brackets). Specifically, the Goforth Trust argues that "[t]he question of the *ultimate validity* of the 2004 Goforth Note and the Goforth Deed of Trust was not before the trial court" and, therefore, the trial court could not conclude that the instruments were invalid. (emphasis added). The Goforth Trust construes the scope of the order too broadly and the role of § 45-21.16 foreclosure proceedings too narrowly.

The trial court in the present case did not determine the "ultimate validity" of the 2004 Goforth Note and Deed of Trust. It determined only, as it should have, whether the instruments were valid *as a matter of law*, because § 45-21.16 foreclosure proceedings are designed *specifically* to resolve the *legal* validity of a debt being foreclosed upon. *See Young*, 227 N.C. App. at 505, 744 S.E.2d at 479 ("[T]he clerk of superior court is limited to making the six findings of fact specified under subsection (d) of [N.C.G.S. § 45-21.16, including] . . . *the existence of a valid debt* of which the party seeking to foreclose is the holder[.]" (emphasis added); *Phil Mechanic Construction Co. v. Haywood*, 72 N.C. App. 318, 322, 325 S.E.2d 1, 3 (1985) ("[W]hen a mortgagee or trustee elects to proceed under G.S. 45-21.1 et seq., issues decided thereunder as to the validity of the debt and the trustee's right to foreclose are *res judicata* and cannot be relitigated in an action for strict judicial foreclosure.").

However, § 45-21.16 foreclosure proceedings are "not intended to settle all matters in controversy between mortgagor and mortgagee[,]" *In re Watts*, 38 N.C. App. 90, 94, 247 S.E.2d 427, 429 (1978), and "the intention of the legislature was not to bar other [related] actions in court[.]" *Phil Mechanic Construction Co.*, 72 N.C. App. at 321, 325 S.E.2d at 3. Although the order of the trial court is conclusive as to the validity of the 2004 Goforth Note and Deed of Trust *as a matter of law*, it does not necessarily preclude a subsequent action to sustain the enforceability of those instruments *as a matter of equity*. *Accord Taylor v. Eatman*, 92 N.C. 601, 605 (1885)

("If this was an action *purely at law*, there can be no doubt . . . [the instrument would] be void. But [if] the action is in a court of blended law and equity jurisdiction, and *although the* [*instrument*] *may be void at law*[,] *it still may be sustained in equity*[.]" (emphasis added)). Accordingly, the Goforth Trust may be correct that the "ultimate validity" of the 2004 Goforth Note and Deed of Trust – in the broadest sense – was not before the trial court. However, the trial court did not exceed its jurisdiction by concluding that the 2004 Goforth Note and Deed of Trust were invalid as a matter of law.

VII. Conclusion

Based on the foregoing analysis, the order of the trial court is affirmed. However, in anticipation of possible future litigation between the parties involving matters related to the present case, we will summarize what this Court does and does not hold in this opinion.

The order of the trial court is conclusive as to the invalidity of the 2004 Goforth Note and Deed of Trust *as a matter of law*. The order does not resolve the enforceability of the 2004 Goforth Note and Deed of Trust *as a matter of equity*. To the extent that any of the findings in the order implicate only equitable concerns, those findings "were [made] outside of [the trial court's] jurisdiction and therefore [would] have no legal effect" in future litigation. *Mosler*, 199 N.C. App. at 297, 681 S.E.2d at 459.

We do not resolve whether the Goforth Trust's argument that Fox Den Development ratified the 2004 Goforth Note and Deed of Trust constitutes a legal or equitable argument. Therefore, for the purposes of whether the order may have a preclusive effect on claims or issues in subsequent litigation, this opinion does not resolve whether the issue of ratification was, or could have been, litigated during the § 45-21.16 foreclosure proceeding in the present case. *See Barrow v. D.A.N. Joint Venture Prop. of N.C., LLC*, __ N.C. App. __, __,755 S.E.2d 641, 646 (2014) (for claim preclusion to apply, "the claims in the second suit [must be] based on the same cause of action as the first suit or could have been asserted in the first suit"); *Williams v. City of Jacksonville Police Dep't*, 165 N.C. App. 587, 593, 599 S.E.2d 422, 428 (2004) (for issue preclusion to apply, "in the prior action, the issues must have been raised and actually litigated").

We also do not resolve whether Homeowners' argument, that the 2009 Goforth Note "paid off" the 2004 Goforth Note and Deed of Trust, constitutes a legal or equitable argument. Therefore, this opinion does not resolve whether that issue was, or could have been, litigated during the § 45-21.16 foreclosure proceeding in the present case.

AFFIRMED.

Judges ELMORE and INMAN concur.

Report per Rule 30(e).