

JUDGMENTS – SUMMARY JUDGMENTS THAT ARE INTERLOCUTORY IN NATURE

**Ed Urban, Vice President and State Counsel
Attorneys Title, a division of United General Title Insurance Company**

When a partial summary judgment, on the issue of liability, is entered against a defendant owner-seller and the document stated that a further court appearance would determine the issue of damages, what has to be done about the partial summary judgment if anything? The partial summary judgment was of no present consequence. The closing and recording should not take place until a further search of the judgment docket showed that no money judgment on the issue of damages was entered. A conveyance to the purchaser for value would be free and clear of the partial summary judgment on the issue of liability and any related subsequent money judgment for damages as long as the money judgment was not docketed before the deed was recorded.

Rule 56(c) of the Rules of Civil Procedure allows rendition of a summary judgment, interlocutory in nature, on the issue of liability alone although there is a genuine issue as to the amount of damages. Rule 56(d) allows further proceedings on the issue of damages. Once an amount of damages is established, a subsequent order will be entered. G.S. 1-233 and G.S. 1-234 refer to judgments affecting the right to property or requiring the payment of money. A judgment on the issue of liability is interlocutory and not final. Therefore it would seem that only the order or judgment setting forth the amount of damages can be a lien under G.S. 1-233 and G.S. 1-234. See Rule 56(c). G.S. 1A-1, Rule 54(a) refers to interlocutory and final judgments. In such a case, there is no relation back to the entry of the interlocutory order. Other statutes seem to support this point. See G.S. 1-302; G.S. 1-306; G.S. 1-339.46 and G.S. 1-339.70. These refer to money judgments.