

## SUBCHAPTER III. PARTIES.

### Article 6.

#### Parties.

#### **§ 1-57. Real party in interest; grantees and assignees.**

Every action must be prosecuted in the name of the real party in interest, except as otherwise provided; but this section does not authorize the assignment of a thing in action not arising out of contract. An action may be maintained by a grantee of real estate in his own name, when he or any grantor or other person through whom he derives title might maintain such action, notwithstanding the conveyance of the grantor is void, by reason of the actual possession of a person claiming under a title adverse to that of the grantor, or other person, at the time of the delivery of the conveyance. In case of an assignment of a thing in action the action by the assignee is without prejudice to any setoff or other defense, existing at the time of, or before notice of, the assignment; but this does not apply to a negotiable promissory note or bill of exchange, transferred in good faith, upon good consideration, and before maturity. (C.C.P., s. 55; 1874-5, c. 256; Code, s. 177; Rev., s. 400; C.S., s. 446.)

#### **§ 1-58. Suits for penalties.**

Where a penalty is imposed by any law, and it is not provided to what person the penalty is given, it may be recovered, for his own use, by anyone who sues for it. When a penalty is allowed by statute, and it is not prescribed in whose name suit therefor may be commenced, suit must be brought in the name of the State. (R.C., c. 35, ss. 47, 48; Code, ss. 1212, 1213; Rev., ss. 401, 402; C.S., s. 447.)

#### **§ 1-59. Suit for penalty, plaintiff may reply fraud to plea of release.**

If an action be brought in good faith by any person to recover a penalty under a law of this State, or of the United States, and the defendant shall set up in bar thereto a former judgment recovered by or against him in a former action brought by any other person for the same cause, then the plaintiff in such action, brought in good faith, may reply that the said former judgment was obtained by covin; and if the collusion or covin so averred be found, the plaintiff in the action sued with good faith shall have recovery; and no release made by such party suing in covin, whether before action brought or after, shall be in anywise available or effectual. (4 Hen. VII, c. 20; R.C., c. 31, s. 100; Code, s. 932; Rev., s. 1521; C.S., s. 447(a); 1925, c. 21.)

#### **§ 1-60. Suit on bonds; defendant may plead satisfaction.**

When an action shall be brought on any single bill or on any judgment, if the defendant had paid the money due upon such bill or judgment before action brought, or where the defendant hath made satisfaction to the plaintiff of the money due on such bill or judgment in other manner than by payment thereof, such payment or satisfaction may be pleaded in bar of such action; and where only part of the money due on such single bill or judgment hath been paid by the defendant, or satisfied in other manner than by payment of money, such part payment or part satisfaction may be pleaded in bar of so much of the money due on such single bill or judgment, as the same may amount to; and where an action is brought on any bond which hath a condition or defeasance to make void the same upon the payment of a lesser sum at a day or place certain, if the obligor, his heirs, executors or administrators have, before the action brought, paid to the obligee, his executor or administrator, the principal and interest due by the condition or defeasance of such bond, though

such payments were not made strictly according to the condition or defeasance; or if such obligor, his heirs, executors or administrators have before action brought made satisfaction to the plaintiff of the principal and interest due by the condition or defeasance of such bond, in other manner than by payment thereof, yet the said payment or satisfaction may be pleaded in bar of such action, and shall be effectual as a bar thereof, in like manner as if the money had been paid at the day and place, according to the condition or defeasance, and so pleaded. (4 Hen. VII, c. 20; R.C., c. 31, s. 101; Code, s. 933; Rev., s. 1522; C.S., s. 147(b); 1925, c. 21.)

**§ 1-61. Repealed by Session Laws 1967, c. 954, s. 4.**

**§ 1-62. Action by purchaser under judicial sale.**

Anyone given possession under a judicial sale confirmed, where the title is retained as a security for the price, is the legal owner of the property for all purposes of bringing suits for injuries thereto, after the day of sale, by trespass or wrongful possession, in the same manner as if the title had been conveyed to him on day of sale, unless restrained by some order of the court directing the sale; and the suit brought is under the control of the court ordering the sale. (1858-9, c. 50; Code, s. 942; Rev., s. 403; C.S., s. 448.)

**§§ 1-63 through 1-64.** Repealed by Session Laws 1967, c. 954, s. 4.

**§§ 1-65 through 1-65.4.** Repealed by Session Laws 1967, c. 954, s. 4.

**§ 1-65.5.** Repealed by Session Laws 1969, c. 895, s. 19.

**§§ 1-66 through 1-69.** Repealed by Session Laws 1967, c. 954, s. 4.

**§ 1-69.1. Unincorporated associations and partnerships; suit by or against.**

(a) Except as provided in subsection (b) of this section:

- (1) All unincorporated associations, organizations or societies, or general or limited partnerships, foreign or domestic, whether organized for profit or not, may sue or be sued under the name by which they are commonly known and called, or under which they are engaging in business, to the same extent as any other legal entity established by law and without naming any of the individual members composing it.
- (2) Any judgments and executions against any such association, organization or society shall bind its real and personal property in like manner as if it were incorporated.
- (3) Any unincorporated association, organization, society, or general partnership bringing a suit in the name by which it is commonly known and called must allege that it has filed an assumed business name certificate under Article 14A of Chapter 66 of the General Statutes.

(b) Unincorporated nonprofit associations are subject to Chapter 59B of the General Statutes and not this section. (1955, c. 545, s. 3; 1975, c. 393, ss. 1, 2; 2006-226, s. 3; 2016-100, ss. 3(a), (b); 2017-23, s. 3.)

**§§ 1-70 through 1-71.** Repealed by Session Laws 1967, c. 954, s. 4.

**§ 1-72. Persons jointly liable.**

In all cases of joint contracts of partners in trade or others, suit may be brought and prosecuted against all or any number of the persons making such contracts. (R.C., c. 31, s. 84; 1871-2, c. 24, s. 1; Code, s. 187; Rev., s. 413; C.S., s. 459.)

**§ 1-72.1. Procedure to assert right of access.**

(a) Any person asserting a right of access to a civil judicial proceeding or to a judicial record in that proceeding may file a motion in the proceeding for the limited purpose of determining the person's right of access. The motion shall not constitute a request to intervene under the provisions of Rule 24 of the Rules of Civil Procedure and shall instead be governed by the procedure set forth in this statute. The movant shall not be considered a party to the action solely by virtue of filing a motion under this section or participating in proceedings on the motion. An order of the court granting a motion for access made pursuant to this section shall not make the movant a party to the action for any purpose.

(b) The movant shall serve a copy of its motion on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure. Upon receipt of a motion filed pursuant to this section, the court shall establish the date and location of the hearing on the motion that shall be set at a time before conducting any further proceedings relative to the matter for which access is sought under the motion. The court shall cause notice of the hearing date and location to be posted at the courthouse where the hearing is scheduled. The movant shall serve a copy of the notice of the date, time, and location of the hearing on all parties to the proceeding in any manner provided in Rule 5 of the Rules of Civil Procedure.

(c) The court shall rule on the motion after consideration of such facts, legal authority, and argument as the movant and any other party to the action desire to present. The court shall issue a written ruling on the motion that shall contain a statement of reasons for the ruling sufficiently specific to permit appellate review. The order may also specify any conditions or limitations on the movant's right of access that the court determines to be warranted under the facts and applicable law.

(d) A party seeking to seal a document or testimony to be used in a court proceeding may submit the document or testimony to the court to be reviewed in camera. This subsection also applies to (i) any document or testimony that is the subject of a motion made under this section and that is submitted for review for the purposes of the court's consideration of the motion to seal, and (ii) to any document or testimony that is the subject of a motion made under this section and that was submitted under seal or offered in closed session prior to the filing of a motion under this section. Submission of the document or proffer of testimony to the court pursuant to this section shall not in itself result in the document or testimony thereby becoming a judicial record subject to constitutional, common law, or statutory rights of access unless the document or testimony is thereafter introduced into evidence after a motion to seal or to restrict access is denied.

(e) A ruling on a motion made pursuant to this section may be the subject of an immediate interlocutory appeal by the movant or any party to the proceeding. Notice of appeal must be given in writing, filed with the court, and served on all parties no later than 10 days after entry of the court's ruling. If notice of appeal is timely given and given before further proceedings are held in the court that might be affected by appellate review of the matter, the court, on its own motion or on the motion of the movant or any party, shall consider whether to stay any proceedings that could be affected by appellate review of the court's ruling on the motion. If notice of appeal is timely given but is given only after further proceedings in the trial court that could be affected by appellate

review of the ruling on a motion made pursuant to this section, or if a request for stay of proceedings is made and is denied, then the sole relief that shall be available on any appeal in the event the appellate court determines that the ruling of the trial court was erroneous shall be reversal of the trial court's ruling on the motion and remand for rehearing or retrial. On appeal the court may determine that a ruling of the trial court sealing a document or restricting access to proceedings or refusing to unseal documents or open proceedings was erroneously entered, but it may not retroactively order the unsealing of documents or the opening of testimony that was sealed or closed by the trial court's order.

(f) This section is intended to establish a civil procedure for hearing and determining claims of access to documents and to testimony in civil judicial proceedings and shall not be deemed or construed to limit, expand, change, or otherwise preempt any provisions of substantive law that define or declare the rights and restrictions with respect to claims of access. Without in any way limiting the generality of the foregoing provision, this section shall not apply to juvenile proceedings or court records of juvenile proceedings conducted pursuant to Chapters 7A, 7B, 90, or any other Chapter of the General Statutes dealing with juvenile proceedings.

(g) Nothing in this section diminishes the rights of a movant or any party to seek appropriate relief at any time from the Supreme Court or Court of Appeals through the use of the prerogative writs of mandamus or supersedeas. (2001-516, s. 1.)

#### **§ 1-72.2. Standing of legislative officers.**

(a) It is the public policy of the State of North Carolina that in any action in any North Carolina State court in which the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution is challenged, the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch of the State of North Carolina and the Governor constitutes the executive branch of the State of North Carolina, and when the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina. It is the public policy of the State of North Carolina that in any action in any federal court in which the validity or constitutionality of an act of the General Assembly or a provision of the North Carolina Constitution is challenged, the General Assembly, jointly through the Speaker of the House of Representatives and the President Pro Tempore of the Senate, constitutes the legislative branch of the State of North Carolina; the Governor constitutes the executive branch of the State of North Carolina; that, when the State of North Carolina is named as a defendant in such cases, both the General Assembly and the Governor constitute the State of North Carolina; and that a federal court presiding over any such action where the State of North Carolina is a named party is requested to allow both the legislative branch and the executive branch of the State of North Carolina to participate in any such action as a party.

(b) The Speaker of the House of Representatives and the President Pro Tempore of the Senate, as agents of the State, by and through counsel of their choice, including private counsel, shall jointly have standing to intervene on behalf of the General Assembly as a party in any judicial proceeding challenging a North Carolina statute or provision of the North Carolina Constitution. Intervention pursuant to this section shall be effected upon the filing of a notice of intervention of right in the trial or appellate court in which the matter is pending regardless of the stage of the proceeding. Notwithstanding any other provision of law to the contrary, the participation of the Speaker of the House of Representatives and the President Pro Tempore of the Senate in any action, State or federal, as a party or otherwise, shall not constitute a waiver of legislative immunity

or legislative privilege of any individual legislator or legislative officer or staff of the General Assembly. (2013-393, s. 3; 2014-115, s. 18; 2017-57, s. 6.7(i).)

**§ 1-72.3. State a party to certain actions.**

The State shall be a party whenever the validity or constitutionality of a local act of the General Assembly is the subject of an action in any court and, except as provided in G.S. 147-17, shall be represented by the Attorney General. This section shall not affect any authority under G.S. 1-72.2 or G.S. 120-32.6. (2016-109, s. 2(a).)

**§§ 1-73 through 1-75.** Repealed by Session Laws 1967, c. 954, s. 4.