

Update & Review of Small Claims Law

Small Claims Procedure

Livesay v. Livesay (NC App 2/24/12)

Trial court erred in dismissing case because plaintiff’s attorney **neglected to sign complaint**. Rule 11 provides that dismissal is appropriate only if the plaintiff (or attorney) fails to promptly sign the complaint even after the error is called to the plaintiff’s attention.

SL2011-332

Amends G.S. 7A-217 to allow **service of process in small claims cases** by designated delivery service.

Amends GS 1A-1, Rule 5(b) to require **service of all court documents** required to be served (other than complaint, which is governed by Rule 4) on party’s attorney, if there is one. If the party is unrepresented, then the party is to be served. Specifies that an attorney may be served by handing the document to the attorney, leaving it at the attorney’s office, faxing it to the attorney (proven with fax receipt confirmation), or mailing it to the office. Service on a party may be accomplished by handing a copy to the party, mailing a copy to the party, or, if the address is not known, by filing with the clerk of court.

NOTES: _____

AOC Form CVM-400 (Judgment in Action to Recover Money or Personal Property)

GS 24-§ 24-5. Interest on judgments.

- (a) **Actions on Contracts.** – In an action for breach of contract . . . the amount awarded on the contract bears interest from the date of breach. The fact finder in an action for breach of contract shall distinguish the principal from the interest in the award, and the judgment shall provide that the principal amount bears interest until the judgment is satisfied. If the parties have agreed in the contract that the contract rate shall apply after judgment, then interest on an award in a contract action shall be at the contract rate after judgment; otherwise it shall be at the legal rate. On awards in actions on contracts pursuant to which credit was extended for personal, family, household, or agricultural purposes, however, interest shall be at the lower of the legal rate or the contract rate. For purposes of this section, "after judgment" means after the date of entry of judgment under G.S. 1A-1, Rule 58. . . .

- (b) Other Actions. – In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied. Any other portion of a money judgment in an action other than contract, except the costs, bears interest from the date of entry of judgment under G.S. 1A-1, Rule 58, until the judgment is satisfied. Interest on an award in an action other than contract shall be at the legal rate.

Contract Law

In re Five Oaks (NC App 3/6/12)

Accord and satisfaction is a defense to an action for money owed (usually based on contract, but sometimes arising in tort), in which the defendant demonstrates that one party has offered and the other has accepted a reduced sum in satisfaction of the debt. This doctrine does not apply, however, when there is no evidence that the amount owed was disputed by the defendant, or that negotiation took place between the parties regarding the amount. Merely writing “in full payment” on a check is insufficient to establish this defense (particularly when the court has specifically found that the words written on the check were illegible!)

FIA Card Services v. Campbell (NC App 2/21/12)

GS 8-45 sets out a special rule for lawsuits based on “an account for goods sold and delivered, for rents, for services rendered, or labor performed, or upon any oral contract for money loaned.” In these cases, a “**verified itemized statement of account**” provided by the creditor is prima facie evidence of the amount owed by the debtor. “Verified” means that the statement of account must be sworn to by a person who would be competent to testify that the amount is correct. In a case in which plaintiff’s only evidence that an account even existed consisted of unverified statements prepared by plaintiff, the court correctly dismissed the case.

Hanes v. Darar (NC App 3/6/12)

Purchaser entered into an installment sales contract for purchase of a Lexus. Seller sold contract to (sister corporation) finance company. (Thus buyer’s only direct contractual relationship was with auto seller.) The **Retail Installment Sales Act** requires that in such cases the buyer may assert all claims against the second purchaser that might have been asserted against the original seller, but that the buyer may recover no more in a breach of contract action than the buyer has paid in. GS 25A-25.

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TD Bank v. Mirabella (NC App 3/20/12)

In an action on a **promissory note**, plaintiff has burden of showing that plaintiff is the holder of the note. This is an essential element of plaintiff’s case. Mere physical possession of the note is insufficient. Plaintiff must show that “it was issued or endorsed to her, to her order, to bearer or in blank.” Where plaintiff-

corporation contended that it owned the note as a result of merger with the original possessor, plaintiff has the burden of proving the existence and terms of the merger supporting its claim of ownership.

J.T. Russell & Sons Inc. v. Silver Birch Pond LLC (NC App 12/6/11)

Useful discussion of “two methods of **measuring damages in construction contract cases**, both of which are intended to put the injured party in as good a position as if the contract had been fully performed. The first method . . . awards the injured party the cost of repair necessary to make the [construction] conform to the contract specifications. The second method awards the injured party the difference in value between the [construction] contracted for and the [construction] actually received. Court also notes that first method may need to be adjusted if buyer has made no payment, to avoid unjust enrichment.

SL2011-341

Adds new section to GS Ch. 6 (Liability for Court Costs) allowing parties to a commercial contract to include an enforceable provision for reciprocal **attorneys’ fees**.

- Applies to: contracts entered into for business or commercial purposes. Does not apply to consumer contracts (which presumably includes residential lease agreements). All parties to the contract must sign the contract by hand.
- Limitations: Provision for attorneys’ fees must apply to all parties. May not exceed the amount in controversy.
- Amount: court is to determine a reasonable amount, based on consideration of “all relevant facts and circumstances.” The statute identifies 13 factors that the court may consider, among others. The new law specifically provides that the amount is not determined by a percentage, whether set out in the contract or in some other statute.

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Tort/Contract Law

Best Cartage v. Stonewall Packaging (NC App 3/20/12)

Contains helpful summary of law related to **partnership** by estoppel, joint venture, and de facto partnership, as well as requirements for piercing the corporate veil.

Hanes v. Darar (NC App., 3/6/12)

Doctrine of inter-corporate liability: In situation in which two corporations are substantially identical (i.e., same business location, telephone number, officers, agents, owners), both corporations may be liable for unfair trade practice committed by agent of both corporations.

Unfair trade practice claim requires something more than showing that defendant deliberately breached a contract. The plaintiff must demonstrate “substantial aggravating circumstances attending the breach.” Those circumstances were present in this case, in which creditor refused to accept debtor’s tendered payments because debtor was allegedly rude to creditor’s wife and then disabled the vehicle for non-payment. In addition, defendant refused to remove the disabled vehicle from plaintiff’s driveway for two months, and accelerated the entire amount due under the sales contract in apparent response to plaintiff’s bringing this lawsuit.

Damages: In action in which same conduct gives rise to breach of contract action and an unfair trade practice action, plaintiff is entitled to recover for only one of those wrongs.

EXAMPLE: Court finds that plaintiff is entitled to recover \$3,700 for breach of contract. Because a defendant who commits an unfair trade practices is liable for “treble damages,” such a claim would warrant \$11,200. Plaintiff is NOT entitled, however, to recover \$14,900, the sum of both potential damage awards.

A plaintiff is not entitled to recover **pre-judgment interest** on the award for unfair trade practices (\$11,200 in the example above), but rather is entitled to recover pre-judgment interest on the amount of the damages attributable to the breach of contract (\$3,700 from date of breach, in the example above).

Plaintiff was not entitled to collect **attorney fees** because GS 75-16 authorizes the court to award such fees in an action for unfair trade practices only if the court specifically finds:

1. That the defendant willfully engaged in the act or practice;
2. That the defendant was unwarranted in refusing to resolve the matter; and
3. That the attorney fees awarded are reasonable. In support of this finding, the court must make findings about the time, labor, and skill involved on the part of the attorney, the attorney’s experience and ability, and the customary fee for such work.

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Torts

Shera v. NCSU Vet. Hospital (NC App 2/21/12)

An action alleging veterinary malpractice is an action for **damage to property**, and the usual rule applies in terms of **allowable damages**. The pet owner is entitled to recover reimbursement for costs of negligent treatment and market value (as represented by replacement costs) of animal. Plaintiff is not entitled to recover the “intrinsic value” of the animal—that is, the value of that particular animal to that particular owner.

Davenport v. D.M. RENTAL PROPERTIES, INC (11/15/11)

A landlord has a duty to exercise reasonable care to protect his tenants from third-party criminal acts that occur on the premises if such acts are foreseeable. But landlord’s failure to take steps such as providing lighting, security cameras, guards, fencing, and other preventative measures must have been the proximate cause of plaintiff’s injuries in order to hold landlord liable. Landlord has no legal responsibility to screen prospective tenants. While other states have recognized that a landlord may be negligent in failing to evict tenants who are foreseeably dangerous to others in some circumstances, NC has not recognized such a duty. The Court does not determine whether such a duty might be recognized on different facts, merely saying that the facts of this case don’t support a finding that such duty was violated even if it did exist.

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Landlord-Tenant

Durham Hosiery v. Morris (NC App. 12/20/11)

(Of interest only because it backs away from language in Lincoln Terrace.)

Remi v. Tyrone (NC App 2/7/12) (unpublished opinion)

Not particularly significant, but we may use this case as a way to review some general summary ejectment law.

SL2011-365

Amends GS 105A-2(6) to provide that a housing authority may collect unpaid rent and other costs from a debtor’s state income tax refund by following the procedure set out in Ch. 105A (The Setoff Debt Collection Act). This procedure is available only if the debt has first been reduced to final judgment.

Chapter 47G.

Option to Purchase Contracts Executed With Lease Agreements.

§ 47G-1. Definitions.

The following definitions apply in this Chapter:

- (1) Covered lease agreement or lease agreement. – A residential lease agreement that is combined with, or is executed concurrently with, an option contract.
- (2) Cure the default. – To perform the obligations under the lease agreement and/or option contract that are described in the notice of default and intent to forfeit required by G.S. 47G-5 and that are necessary to reinstate the lease agreement and/or the option contract. This term is synonymous with the term "cure."
- (3) Forfeiture. – The termination of an option purchaser's rights to exercise an option to purchase property that is the subject of the option contract, and those rights of persons or entities claiming by or through an option purchaser, to the extent permitted by this Chapter, because of a breach of one or more of the purchaser's obligations under the option contract and/or covered lease agreement.
- (4) Option contract or contract. – An option contract for the purchase of property that includes or is combined with, or is executed in conjunction with, a covered lease agreement.
- (5) Option fee. – Any payment, however denominated, made by the option purchaser to the option seller that constitutes the price the option purchaser pays for the right to buy the property at a specified price in the future.
- (6) Option purchaser or purchaser. – An individual who purchases an interest in property under an option contract, or any legal successor in interest to that individual.
- (7) Option seller or seller. – A person or entity that makes a sale of an option by means of an option contract, or the person's or entity's successor in interest. If an option contract is subsequently assigned or sold to a third party, the assignor shall be deemed to be an option seller or seller for purposes of this Chapter.
- (8) Property. – Real property located in this State, upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families that is or will be occupied by the purchaser as the purchaser's principal dwelling. (2010-164, s. 3.)

§ 47G-2. Minimum contents of option contracts; recordation.

(a) Writing Required. – Every option contract, including any assignment of an option contract, shall be evidenced by a contract signed and acknowledged by all parties to it and containing all the terms to which they have agreed. The seller shall deliver to the purchaser an exact copy of the contract, containing all the disclosures required by subsection (b) of this section, at the time the purchaser signs the contract.

(b) Contents. – An option contract shall contain at least all of the following:

- (1) The full names and addresses of all the parties to the contract.
- (2) The date the contract is signed by each party.
- (3) A legal description of the property to be conveyed subject to an option to purchase.
- (4) The sales price of the property to be conveyed subject to an option to purchase.
- (5) The option fee and any other fees or payments to be paid by each party to the contract.

- (6) All of the obligations that if breached by the purchaser will result in forfeiture of the option.
- (7) The time period during which the purchaser must exercise the option.
- (8) A statement of the rights of the purchaser to cure a default, including that the purchaser has the right to cure a default once in any 12-month period during the period of the covered lease agreement.
- (9) A conspicuous statement, in not less than 14-point boldface type, immediately above the purchaser's signature, that the purchaser has the right to cancel the contract at anytime until midnight of the third business day following execution of the option contract or delivery of the contract, whichever occurs last.

(c) Right to Cancel. – The purchaser may exercise the right to cancel the option contract until midnight of the third business day following execution of the option contract or delivery of a copy of the option contract, with the required minimum disclosures, whichever occurs last. If the purchaser cancels the option contract, the seller shall, not later than the tenth day after the date the seller receives the purchaser's notice of cancellation, return to the purchaser any and all property exchanged or payments made by the purchaser under the option contract minus an offset of an amount equal to the fair rental value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear.

(d) Recordation. – Within five business days after the option contract has been signed and acknowledged by both the seller and the purchaser, the seller shall cause a copy of the option contract or a memorandum of the option contract to be recorded in the office of the register of deeds in the county in which the property is located. If a memorandum of the contract is recorded, it shall be entitled "Memorandum of Option Contract" and shall contain, as a minimum, the names of the parties, the signatures of the parties, a description of the property, and applicable time periods as described in subdivisions (b)(7) and (8) of this section. A person other than a seller and purchaser may rely on the recorded materials in determining whether the requirements of this subsection have been met. The seller shall pay the fee to record the document unless the parties agree otherwise.

(e) Effect of Forfeiture. – Upon default and forfeiture after proper notice of default and intent to forfeit and failure of the purchaser to substantially cure the default, the purchaser's equitable right of redemption shall be extinguished by:

- (1) A mutual termination executed by the parties and recorded in the office of the register of deeds of the county in which the property is located, or
- (2) A final judgment or court order entered by a court of competent jurisdiction that terminates the purchaser's rights to the property and extinguishes the equity of redemption. A certified copy of the order shall be recorded in the office of the register of deeds of the county in which the property is located pursuant to G.S. 1-228.

(f) [Instrument Ineffective.] – No instrument purporting to extinguish the equity of redemption that is executed as a condition of the transaction or prior to a default will be effective. (2010-164, s. 3.)

§ 47G-3. Application of Landlord Tenant Law.

The provisions of Chapter 42 of the General Statutes apply to covered lease agreements. (2010-164, s. 3.)

§ 47G-4. Condition of forfeiture; right to cure.

A purchaser's right to exercise an option to purchase property under an option contract cannot be forfeited unless a breach has occurred in one or more of the purchaser's express obligations under the option contract and the option contract provides that as a result of such breach the seller is entitled to forfeit the contract. Notwithstanding any option contract or covered lease agreement provisions to the contrary, the purchaser's rights shall not be forfeited until the purchaser has been notified of the intent to forfeit in accordance with G.S. 47G-5 and been given a right to cure the default and has failed to do so within the time period allowed. The option purchaser is entitled to the right to cure a default once in every 12-month period during the period of the covered lease agreement. (2010-164, s. 3.)

§ 47G-5. Notice of default and intent to forfeit.

(a) A notice of default and intent to forfeit shall specify the nature of the default, the amount of the default if the default is in the payment terms, the date after which the contract will be forfeited if the purchaser does not cure the default, and the name and address of the seller or the attorney for the seller. The period specified in the notice after which the contract will be forfeited may not be less than 30 days after the notice of default and intent to forfeit is served, or before judgment is given in any action brought to recover the possession of the leased premises pursuant to Article 3 of Chapter 42 of the General Statutes, whichever is earlier.

(b) Any notice of default and intent to forfeit must be delivered to the option purchaser by hand delivery or by any manner authorized by G.S. 1A-1, Rule 4. (2010-164, s. 3.)

§ 47G-6. Effect of seller's default on loan secured by mortgage or lien on property.

If, at any time prior to the expiration of the time period in which the option purchaser has a right to exercise the option to purchase, a default occurs on a loan secured by a mortgage, security interest, or other lien on the property, the option purchaser may elect to exercise the option or cancel and rescind the contract and, in addition to any other remedies available at law or equity, seek the immediate return of all moneys paid by the option purchaser. If the purchaser elects to rescind the contract, the seller is entitled to an offset of an amount equal to the fair rental value of the use of the property during the duration of the purchaser's possession of the property plus an amount necessary to compensate the seller for any damages caused to the property by the purchaser beyond normal wear and tear. (2010-164, s. 3.)

§ 47G-7. Remedies.

A violation of any provision of this Chapter constitutes an unfair trade practice under G.S. 75-1.1. An option purchaser may bring an action for the recovery of damages, to void a transaction executed in violation of this Chapter, as well as for declaratory or equitable relief for a violation of this Chapter. The rights and remedies provided herein are cumulative to, and not a limitation of, any other rights and remedies provided by law or equity. Nothing in this Chapter shall be construed to subject an individual homeowner selling his or her primary residence directly to an option purchaser to liability under G.S. 75-1.1. (2010-164, s. 3.)

File No.

Film No.

Judgment Docket Book And Page No.

JUDGMENT IN ACTION TO RECOVER MONEY OR PERSONAL PROPERTY

G.S. 7A-210(2), 7A-224

Name And Address Of Plaintiff

County

Telephone No.

VERSUS

Name And Address Of Defendant 1

County

Telephone No.

Name And Address Of Defendant 2

County

Telephone No.

Name And Address Of Plaintiff's Attorney

STATE OF NORTH CAROLINA

County

In The General Court Of Justice
District Court Division-Small Claims

This action was tried before the undersigned on the cause stated in the complaint. The record shows that the defendant was given proper notice of the nature of the action and the date, time and location of trial.

FINDINGS

The Court finds that:

- the plaintiff has proved the case by the greater weight of the evidence.
- the plaintiff has failed to prove the case by the greater weight of the evidence.
- the defendant(s) was was not present at trial.
- the case involves a breach of contract and the date of breach is: _____.
- the contract provides for pre-judgment interest on damages for breach at the rate of _____ % and/or post-judgment interest at the rate of _____ %.
- the contract does not provide a specific pre-judgment interest rate.
- the contract does not provide a specific post-judgment interest rate.
- Other: _____.

ORDER

It is ORDERED that:

- the plaintiff recover possession of the personal property described in the complaint.
- the plaintiff recover possession of the personal property listed below:
- the plaintiff recover nothing of the defendant(s) and that this action be dismissed with prejudice.
- (for breach of contract cases) the plaintiff recover of the defendant(s) the following principal sum plus interest on the principal from the date of breach to the date of judgment (1) at the rate provided in the contract, as found above; or (2) at the legal rate. In addition, the principal shall bear interest from the date of judgment until the judgment is satisfied (1) at the rate provided in the contract, as found above; or (2) at the legal rate.
- (for tort cases) the plaintiff recover of the defendant(s) the following principal sum, plus interest at the legal rate from the date the action was instituted until judgment is satisfied.
- Other: (specify)
- Costs of this action are taxed to the plaintiff. defendant.

Principal Sum Of Judgment \$

(Name Of Judgment Debtor(s) From Whom Amount Recovered

Pre-judgment Interest Not Included \$ Judgment Announced And Signed In Open Court

Date

Signature Of Magistrate

Attorney's Fees Or Other Damages \$

(when appropriate)

Name Of Party Announcing Appeal In Open Court

TOTAL AMOUNT \$

CERTIFICATION

NOTE: To be used when magistrate does not announce and sign this Judgment in open court at the conclusion of the trial.
I certify that this Judgment has been served on each party named by depositing a copy in a post-paid properly addressed envelope in a post office or official depository under the exclusive care and custody of the United States Postal Service.

Date

Signature Of Magistrate

