SMALL CLAIMS LAW

UPDATE AND REVIEW

PROCEDURE

WHAT'S A MISNOMER?

GOODWIN V. FOUR COUNTY ELECTRIC CARE

COA, filed 12/20/2016

Goodwin v. Four County Electric Care

- After being injured by a power line regulator, plaintiff filed the action against "Four County Electric Care Trust, Inc., aka Four County Electric Membership Corporation"
- Two different entities involved—one non-profit and one electric membership cooperative

Goodwin v. Four County Electric Care

- The Trust was named first in the complaint and summons, and was actually served
- The Trust did *not* own the regulator
- The Cooperative *did* own the regulator, but was *not* named as a separate defendant and was *not* served

TRUST
NO OWNERSHIP
SERVED

COOPERATIVE
OWNERSHIP
NOT SERVED

Goodwin v. Four County Electric Care

- Defendant claims this is a misnomer and asks that the name on the complaint and summons be corrected
- The trial court denies this motion and states that this is *not* a misnomer, but instead an action against the wrong defendant.

TRUST
NO OWNERSHIP
SERVED
(WRONGLY)

COOPERATIVE
OWNERSHIP
NOT SERVED
(PROPER
DEFENDANT)

WILLIAMS V. ADVANCE AUTO PARTS, INC.

COA, filed 1/17/2017

Williams v. Advance Auto Parts, Inc.

- This was a personal injury action filed by the plaintiff against Advance Auto Parts, Inc. (AAP)

Williams v. Advance Auto Parts, Inc.

- Plaintiff later amended complaint to add Advance Stores Company, Inc. (ASC) as defendant.
- Advance Auto Parts is the holding company for ASC, which is a wholly-owned subsidiary.

Plaintiff files against AAP

Plaintiff amends to add ASC as Co-Defendant

Williams v. Advance Auto Parts, Inc.

- The Court ruled that the statute of limitations barred action against ASC when the amendment was filed—naming of AAP was **not** a misnomer, but action against the wrong defendant
- In this instance, the parent company, AAP, was not legally responsible for the actions of its subsidiary and was thus incorrectly named

AAP
PARENT COMPANY OF ASC
[INCORRECT DEFENDANT]

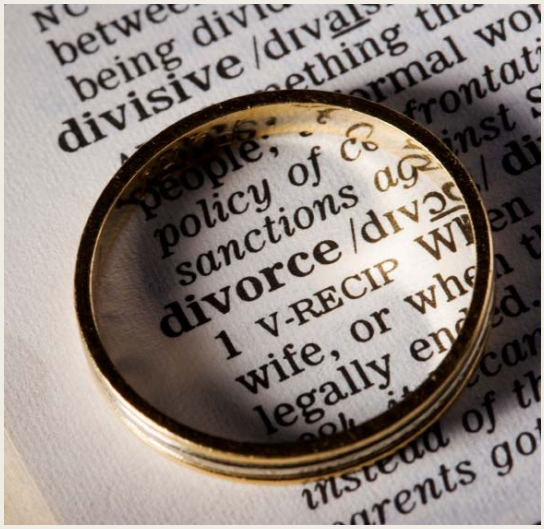
ASC
SUBSIDIARY OF AAP
[CORRECT DEFENDANT]

HINTON V. HINTON

COA, filed 11/15/2016

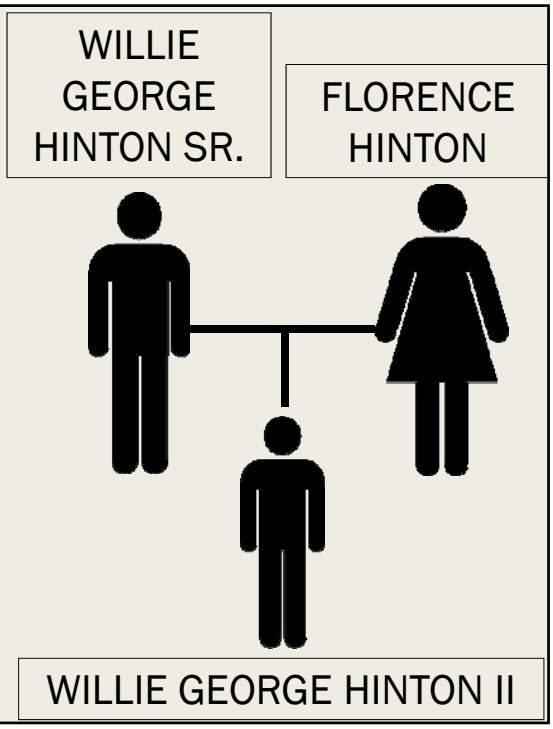
Hinton v. Hinton

- This case featured a dispute over inheritance
- Central issue is whether a specific divorce granted about seventeen years ago is valid



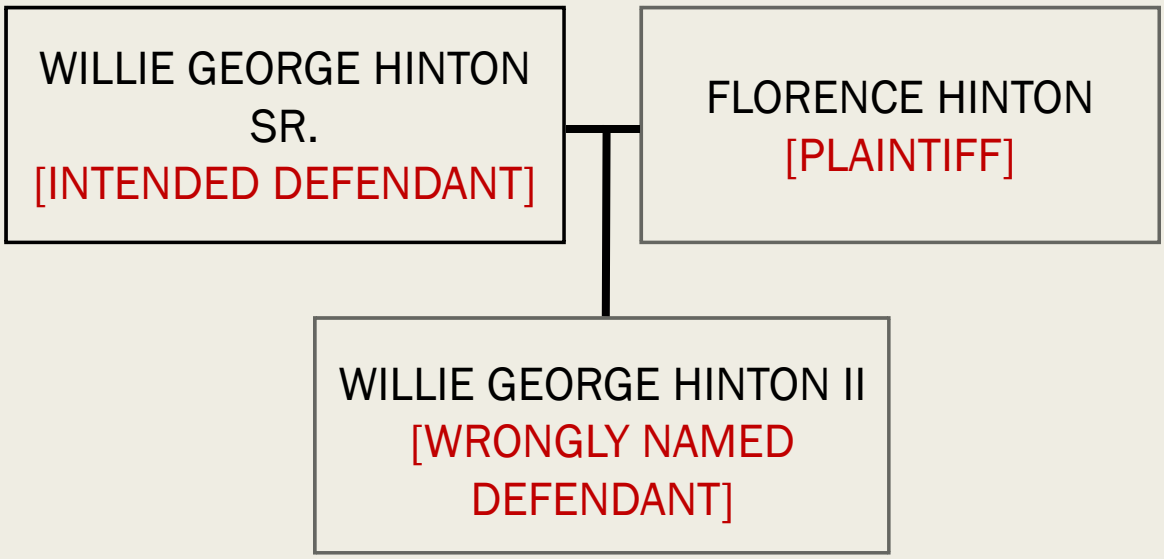
Hinton v. Hinton

- In 2000, Florence Hinton files for divorce from her husband, Willie George Hinton Senior
- The two have a son named Willie George Hinton II



Hinton v. Hinton

- In her 2000 complaint, Florence Hinton inadvertently names her ***son,*** Willie George Hinton II, as the defendant—NOT her husband!
- Her husband, Willie George Hinton Sr., is served with a summons that bears his son's name
- He then files an answer joining in his wife's request for a divorce
- The final judgement mistakenly listed the son's name as the defendant!



Hinton v. Hinton

- The court ruled that, ***because Hinton Senior filed an answer,*** he "expressly became a party"
- The divorce was held to be valid

LANDLORD-TENANT LAW

RME MANAGEMENT LLC V. CHAPEL H.O.M. ASSOC., LLC

Filed 1/17/2017

Relevant lease provisions:

- The Lessee expressly agrees to pay all installments of taxes and assessments required to be paid by it hereunder when due on September 1 of the fiscal year for which the taxes are due,
- If any default of the Lessee hereunder shall continue uncorrected for thirty (30) days after notice thereof from the Lessors, the Lessors may, by giving written notice to the Lessee, at any time thereafter during the continuance of such default either (a) terminate the lease, or (b) re-enter the demised premises by summary process or otherwise, and expel the Lessee and remove all personal property therefrom

Relevant statute: GS 105-360(a)

Taxes levied under this Subchapter by a taxing unit are due and payable on September 1 of the fiscal year for which the taxes are levied. Taxes are payable at par or face amount if paid before January 6 following the due date. Taxes paid on or after January 6 following the due date are subject to interest charges.

Timeline

- Lease began in 1966, and was scheduled to end on December 31, 2015.
- T had the right to renew the lease for 49 years, and had exercised that option in September, 2014. The new lease would begin on January 1, 2016.
- There was no discussion about payment of property taxes until September, 2013, when LL raised the issue and T replied that payment anytime before Jan. 6 complied with lease.
- T did not pay property taxes on September 1, 2015, and LL gave notice of default on 9/21, challenged by T in letter dated 10/16
- LL sent notice to vacate and filed SE action on 10/27
- T paid taxes on 11/3

What does DUE mean?

Plaintiff-LL

"Taxes that are due on the first are overdue on the 2nd, triggering right to declare lease forfeited."

Defendant-T

"Taxes that are due on 9/1 and payable without penalty until 1/6 are not overdue until 1/6, and thus T is in not in default until 1/7."

Small claims: Rules in favor of T
LL appealed and lost again.
DCJ said:

Here, the course of dealing clearly shows that the parties historically did not construe the lease to require that the taxes be paid by midnight on September 1 each year; they understood the terms "pay" and "pay when due" to have been used in their ordinary sense, rather than within the technical, literal definitional requirements of N.C. Gen. Stat. § 105-360. The ordinary meaning of "pay" and "pay when due" customarily includes an implicit grace period during which payment can be made without being overdue; few obligations, and certainly not property taxes, are expected to be paid on the very first day they become due. The taxes were paid during the implicit grace period which the lease afforded, given the ordinary meaning of the terms used, and in light of the course of dealing.

LL appealed to NC COA . . . and lost again. COA said:

We think DUE means the same thing as DUE AND PAYABLE.

We don't think the parties intended to require payment on September 1 to avoid default, but instead contemplated payment at any point during the payment period.

If the parties intended to require payment on the first day of the payment period, they could have said so—and they didn't.

Query: Does the opinion in RME change your analysis of these lease provisions?

"The monthly rent is due on the first, and if the rent is not paid by the 5th, the landlord is entitled to charge a late fee of the greater of $15 or 5% of the monthly rent."

"If tenant fails to pay the rent when due, the LL may without further notice declare the lease terminated and file an action to recover possession of the property."

TORTS

MAUNEY V. CARROLL

COA, filed 12/20/2016

Mauney v. Carroll

- Mauney is the lessee of a 2013 Porsche Boxster. He is leasing it for 27 months.
- Mauney is involved in an accident while driving. Carroll is the defendant-motorist, and it is ruled that Carroll is at fault for the accident, which caused damage to the Porsche.

Mauney v. Carroll

- Insurance covered the cost of the repairs, and it took 37 days for Mauney's car to be repaired.
- Mauney then drove the car for 15 more months before exchanging it for a newer model.
- Mauney brought this action to recover diminished value and damages arising from loss of use

LOSS OF USE DAMAGES?

MAYBE.

MAUNEY V. CARROLL

- Because Mauney was not the owner of the car, he was not entitled to recover for diminished value.
- He could, however, have a jury "wade through" evidence related to loss of use damages because he was the legal possessor for the 37 days the car was being repaired

MAUNEY V. CARROLL: FACTORS TO CONSIDER, PART ONE

- Were the repairs completed within a reasonable time and at a reasonable cost?
- The costs of renting an identical car for 37 days would have been $400 a day
- Pro rata costs under rental contract was $40 a day for 27 months

MAUNEY V. CARROLL: FACTORS TO CONSIDER, PART TWO

- If plaintiff was offered a free replacement during repair time and opted not to use it, then the amount of damages awarded might be reduced by his failure to mitigate
- Is there evidence that the plaintiff actually used his own alternate vehicle? [Note that plaintiff is NOT REQUIRED to prove he actually rented a substitute vehicle to be entitled to recover costs of such a rental!]

ETHICS

IN RE MACK

NC Supreme Court, filed 12/21/2016

In re Mack

- Superior Court Judge owns two rental properties. When T damaged one, the Judge sought criminal charges, listing his address on the criminal summons as that of the Craven County Courthouse.
- Case was calendared in judge's courtroom, and moved to a separate room when called, whereupon D paid restitution and DA dismissed charges.

DVPO CASES

HARMON V. HARMON

COA, filed 12/20/2016

(Unpublished)

Harmon v. Harmon

- The plaintiff in this case is a granddaughter who had been slapped in the face by her grandmother
- The question at hand: Was the plaintiff placed in fear of imminent serious bodily injury?

COURT RULES: NO.

HARMON V. HARMON: WHY?

- Child did not testify to being afraid
- DSS took no action on report
- Police did not make an arrest
- No mark was visible shortly after the incident
- Grandmother testified that she and the plaintiff talked soon after the incident, hugged, and plaintiff said she "was okay"

EDWARDS V. COLE

COA, filed 2/7/2016

(Unpublished)

Edwards v. Cole: No Signature? Problem.